



**OFFICE OF THE ATTORNEY  
GENERAL**

**TAXATION DIVISION**

**COMPTROLLER OF PUBLIC ACCOUNTS  
CASE LIST AND SUMMARY OF ISSUES**

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## Franchise Tax

***Anderson-Clayton Bros. Funeral Home, Inc.; Restland of Dallas, Inc.; Restland Funeral Home; Singing Hills Funeral Homes, Inc.; Laurel Land Funeral Home of Fort Worth, Inc.; Blue Bonnet Hills Funeral Home, Inc.; and Blue Bonnet Hills Memorial Park, Inc. v. Rylander, et al.*** Cause #99-12183

#03-03-00458-CV

#05-0063

AG Case #991227646

Franchise Tax; Refund

Filed: 10/18/99

Period: 1993-1996

Amount: \$407,212.91

\$107,861.97

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Jan Soifer

Brim, Arnett, Soifer,

Robinett, Hanner &

Connors

Austin

Susan A. Kidwell

Locke, Liddell & Sapp

Austin

Issue: Whether income earned on Plaintiff's trust accounts for prepaid funeral services gives rise to Texas gross receipts.

Status: Motion for Summary Judgment held 04/10/03; granted in favor of the State 06/24/03. Plaintiff's Notice of Appeal filed 07/31/03. Appellants' brief filed 09/18/03. Appellees' brief filed 10/24/03. Appellants' reply brief filed 11/12/03. Oral Argument completed 01/07/04. Appellees' post-submission brief filed 01/22/04. Appellants' reply brief filed 02/06/04. Opinion issued 08/12/04 in favor of State affirming the district court's judgment. Motion for Rehearing filed 10/01/04; overruled 12/09/04. Petition for Review filed in Texas Supreme Court 01/24/05. Respondents filed waiver to respond 02/02/05. Case forwarded to Court 02/08/05. Court requested a response to the Petition for Review, due 04/04/05. Respondent filed a response to the Petition for Review 03/31/05.

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**CTX Mortgage Co., LLC, as Successor in Interest to CTX Mortgage Co., Inc. v. Strayhorn, et al.** Cause #GN300145  
AG Case #031738131

Franchise Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 01/15/03	Plaintiff's Counsel:	David Cowling
Period: 1992-1994		Robert Lochridge
Amount: \$6,482.90		Jones Day
		Dallas

Issue: Whether application of the requirement of documentation that officers do not participate in significant policy-making aspects of the corporation is retroactive and unconstitutional. Whether different treatment of banks and mortgage companies violates equal protection. Whether Plaintiff's vice presidents and others should not be included in the officer add-back provision of the franchise tax. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress.

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**Centex Construction Co., Inc., as Successor in Interest to Centex Bateson Construction Co., Inc. v. Strayhorn, et al.** Cause #GN301292  
AG Case #031787153

Franchise Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 04/23/03	Plaintiff's Counsel:	David Cowling
Period: 1992-1995		Robert Lochridge
Amount: \$191,167.76		Jones Day
		Dallas

Issue: Whether the Comptroller's add-back of compensation to certain officers and directors included persons who lacked significant policy-making authority and was unconstitutional. Whether the Comptroller improperly applied changes in Rule 3.558 to earlier periods. Whether the officer add-back is arbitrary and discriminatory. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Discovery in progress.

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***Centex Construction Co., Inc., as Successor in Interest to Centex Bateson Construction Co., Inc. v. Strayhorn, et al.*** Cause #GN301293  
AG Case #031787161

Franchise Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 04/23/03	Plaintiff's Counsel:	David Cowling
Period: 1996		Robert Lochridge
Amount: \$48,729.67		Jones Day
		Dallas

Issue: Whether the Comptroller's add-back of compensation to certain officers and directors included persons who lacked significant policy-making authority and was unconstitutional. Whether the Comptroller improperly applied changes in Rule 3.558 to earlier periods. Whether the officer add-back is arbitrary and discriminatory. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Discovery in progress.

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***Centex International, Inc., as Successor in Interest to 2728 Holding Corp., as Successor in Interest to Centex Real Estate Corp. v Strayhorn, et al.*** Cause #GN400903  
AG Case #041941147

Franchise Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 03/17/04	Plaintiff's Counsel:	David Cowling
Period: 1992-1995		Robert Lochridge
Amount: \$634,494.07		Jones Day
		Dallas

Issue: Whether the Comptroller's add-back of compensation to certain officers and directors included persons who lacked significant policy-making authority and was unconstitutional. Whether the Comptroller improperly applied changes in Rule 3.558 to earlier periods. Whether the officer add-back is arbitrary and discriminatory. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress.

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***Centex Materials, L.P., As Successor in Interest to Centex Materials, Inc. v. Strayhorn, et al.*** Cause #GN301277  
AG Case #031787146

Franchise Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 04/22/03	Plaintiff's Counsel:	David Cowling
Period: 1997-2000		Robert Lochridge
Amount: \$96,248.92		Jones Day
		Dallas

Issue: Whether the Comptroller's add-back of compensation to certain officers and directors included persons who lacked significant policy-making authority and was unconstitutional. Whether the Comptroller improperly applied changes in Rule 3.558 to earlier periods. Whether the officer add-back is arbitrary and discriminatory. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Discovery in progress.

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***Central Telephone Co. of Texas and United Telephone Co. of Texas v. Rylander, et al.*** Cause #GN100332  
AG Case #011409646

Franchise Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 02/01/01	Plaintiff's Counsel:	Mark W. Eidman
Period: 1988-1994		Ray Langenberg
Amount: \$300,772.95		Scott, Douglass &
\$204,616.25		McConnico
		Austin

Issue: Whether inclusion of access charges in Texas' gross receipts violates Comptroller rules on franchise tax treatment of interstate telephone receipts. Whether inclusion of the charges violates equal protection.

Status: DWOP notice sent by court 03/29/05.

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***Chevron USA, Inc. v. Strayhorn, et al.*** Cause #GN401579  
AG Case #041972456

Franchise Tax; Refund Filed: 05/17/04 Period: 1987-1999 Amount: \$44,063,913.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg R. Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff may compute surplus using an alternative GAAP method of calculating impairment. Whether Plaintiff may use business loss carry-forward as a deduction to taxable earned surplus. Whether the Comptroller incorrectly calculated Plaintiff's pushdown adjustments. Whether environmental reserves should be calculated as taxable capital surplus. Whether Plaintiff is entitled to the manufacturing credit.

Status: Answer filed.

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***Chevron USA, Inc. v. Strayhorn, et al.*** Cause #GN500170  
AG Case #052091378

Franchise Tax; Refund Filed: 01/18/05 Period: 1988-1991, 1995, 1996 and 1999 Amount: \$5,000,000.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether abandonment costs of oil and gas properties can be excluded from surplus as contra-asset accounts for depreciation, depletion and amortization under GAAP guidelines. Whether Plaintiff may change its accounting methods used to calculate surplus within a four year period. Plaintiff also claims violation of equal and uniform taxation and equal protection.

Status: Discovery in progress.

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***DaimlerChrysler Services North American, LLC*** Cause #GN401380  
AG Case #041965591

Franchise Tax; Refund Filed: 04/30/04 Period: 1988 through 1991 Amount: \$2,123,382.74	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Matthew J. Meese Scott, Douglass & McConnico Austin
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Issue: How should proceeds from the sale of accounts receivables, including retail and wholesale, be calculated for franchise tax apportionment purposes. Whether plaintiff's accounts receivables are capital assets or investments. Plaintiff claims that the Comptroller's use of the net gain method instead of the gross receipts method in calculating plaintiff's total gross receipts for franchise tax apportionment purposes violates the Texas Tax Code, the Comptroller's rules, Comptroller policy, and the constitutional requirements of equal protection and equal and uniform taxation.

Status: Answer filed.

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***Dillard Department Stores, Inc. v. Strayhorn, et al.*** Cause #GN300878  
AG Case #031770621

Franchise Tax; Refund & Declaratory Judgment Filed: 03/19/03 Period: 1992-1995 Amount: \$1,646,637	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Cynthia M. Ohlenforst Tracy D. Eaton Dallas
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Issue: Whether the franchise tax requirement to add back officer and director compensation to the tax base is an unconstitutional tax on the income of natural persons. Whether the shareholder limit for the add-back is arbitrary, unreasonable and discriminatory. Whether the provision also discriminates unconstitutionally between banks and other corporations and should be limited to officers with significant authority.

Status: Answer filed.

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***El Paso Corp. v. Strayhorn, et al.*** Cause #GN304213

AG Case #031879356

Franchise Tax; Protest

Filed: 10/28/03

Period: 1999 - 2001

Amount: \$2,278,308.75

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman  
Ray Langenberg  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether severance pay and merger expenses were improperly included in Plaintiff's apportionment factor. Whether other income was improperly sourced or included. Whether certain deductions were erroneously disallowed. Plaintiff also seeks waiver of all penalty and interest.

Status: Answer filed.

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***El Paso Natural Gas Co. v. Strayhorn, et al.*** Cause #GN301003

#03-05-00144-CV

AG Case #031778939

Franchise Tax; Refund

Filed: 03/28/03

Period: 1989-1991

Amount: \$3,000,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman  
Ray Langenberg  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether Plaintiff may use the successful efforts method of accounting. Whether revenue should be recognized when it is billed rather than when it is booked. Whether unamortized loss on reacquired debt may be expensed. Whether certain accounts should be removed from surplus because they had zero balances. Whether Plaintiff's apportionment factor should be reduced for receipts from gas not picked up or delivered in Texas.

Status: Discovery in progress. Summary Judgment hearing held 08/24/04; taken under advisement. Both motions granted in part and denied in part. Judgment entered 02/24/05. Notices of Appeal filed 03/08/05. Appellants' briefs due 04/25/05.

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***First Co. v. Rylander, et al.*** Cause #GN200229  
AG Case #021556980

Franchise Tax; Refund &  
Declaratory Judgment  
Filed: 01/24/02  
Period: 1996 through  
1999  
Amount: \$1,919,109

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

James F. Martens  
Christina A. Mondrik  
James F. Martens &  
Associates  
Austin

Issue: Whether the throwback rule is unconstitutional and violates P.L. 86-272. Whether apportionment under the throwback rule, when compared to a separate accounting method, creates such a gross disparity in taxable income as to be unconstitutional. Plaintiff also seeks declaratory judgment and attorneys' fees.

Status: Discovery suspended.

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***Home Interiors & Gifts, Inc. v. Strayhorn, et al.*** Cause #GN303185  
#03-04-00660-CV  
AG Case #031842420

Franchise Tax; Refund  
Filed: 08/25/03  
Period: 1992-1999  
Amount: \$16,085,391.00

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Daniel L. Butcher  
Strasburger & Price  
Dallas

Farley P. Katz  
Strasburger & Price  
San Antonio

Issue: Whether the Texas throwback provision, Tax Code §171.1032, is unconstitutional in violation of the Due Process, Commerce, Supremacy, and Equal Protection Clauses.

Status: Hearing on Cross-Motions for Summary Judgment held 09/21/04. Court granted Defendants' MSJ 09/30/04. Notice of Appeal filed 10/20/04. Clerk's Record filed 11/22/04. Appellant's brief filed 01/24/05. Supplemental Clerk's Record filed 02/11/05. Appellees' brief filed 03/25/05. Oral Argument set 05/25/05.

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***Inland Truck Parts Co. v. Strayhorn, et al.*** Cause #GN302603

AG Case #031831746

Franchise Tax; Refund &  
Declaratory Judgment

Filed: 07/24/03

Period: 1999

Amount: \$47,775.25

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Cynthia M. Ohlenforst  
G. James Landon  
J. Blake Rice  
Hughes & Luce  
Dallas

Issue: Whether an S corporation owned by an ESOP owes franchise tax when the shareholder has no income reportable to the IRS as taxable.

Status: Answer filed.

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***INOVA Diagnostics, Inc. v. Strayhorn, et al.*** Cause #GN302862

#03-04-00503-CV

AG Case #031836471

Franchise Tax; Protest &  
Declaratory Judgment

Filed: 08/11/03

Period: 1999 through  
2003

Amount: \$4,658

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Gilbert J. Bernal, Jr.  
Stahl, Bernal & Davies  
Austin

Issue: Whether taxpayer has nexus with Texas. Whether the capital- based franchise tax is measured by net income for purposes of P.L. 86-272. Whether the Comptroller wrongfully forfeited plaintiff's corporate privileges. Plaintiff also seeks attorneys' fees.

Status: Non-jury trial held 07/13/04 and Judgment granted for State. Findings of Fact and Conclusions of Law filed 07/21/04. Notice of Appeal filed 08/16/04. Clerk's Record filed 11/05/04. Appellant's brief filed 12/29/04. Appellees' brief filed 02/16/05. Appellant's Reply Brief filed 03/31/05. Oral Argument set 04/13/05.

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***Kellwood Co., The v. Strayhorn, et al.*** Cause #GN500508  
AG Case #052102654

Franchise Tax; Protest  
Filed: 02/16/05  
Period: 2001-2003  
Amount: \$129,355.44

Asst. AAG Assigned:

Jeff Mullins

Plaintiff's Counsel:

Ira A. Lipstet  
Jason Flaherty  
Jenkins & Gilchrist  
Austin

Issue: How should pension reversion gain be allocated for franchise tax apportionment purposes. Is the pension reversion gain non-unitary or unitary earned surplus income. Whether Plaintiff's pension reversion gain should be calculated with Plaintiff's Texas gross receipts. What methodology the Comptroller should apply to not distort the amount of taxable earned surplus apportionable to Texas. Plaintiff also claims violation of the Due Process and Commerce Clauses of the US Constitution and the Due Course of Law provision of the Texas Constitution.

Status: Answer filed.

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***Randall's Food & Drugs, Inc. v. Rylander, et al.*** Cause #GN003174  
AG Case #001375450

Franchise Tax; Protest  
Filed: 10/31/00  
Period: 1994-1997  
Amount: \$4,006,942.39

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Jasper G. Taylor, III  
Jay M. Chadha  
Fulbright & Jaworski  
Houston

Issue: Whether the Comptroller's Rule 3.555(g)(3), which denies a carry forward of business losses of a merged corporation by the surviving corporation, is an unconstitutional retroactive law or a violation of Texas and Delaware statutes on mergers. Whether compensation of officers and directors should have been added back to Plaintiff's income and whether doing so violates constitutional equal taxation requirements. Whether some receipts were incorrectly treated as Texas receipts. Whether surplus calculation by the Comptroller should have excluded increases from push-down accounting. Whether failure to waive penalties and interest was arbitrary. Whether the audit has calculation errors. Whether the Comptroller's determination and decision violate equal protection, due process, and other constitutional provisions.

Status: Non-jury trial held 12/14/04. Court granted judgment for the Comptroller on 01/19/05. Findings of Fact and Conclusions of Law signed.

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***Reliant Energy Corp. (formerly Houston Industries, Inc.) v. Rylander, et al.***

Cause #GN103935

AG Case #011532348

Franchise Tax; Refund

Filed: 11/28/01

Period: 1998

Amount: \$2,581,013.52

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

L.G. Skip Smith  
David H. Gilliland  
Clark, Thomas & Winters  
Austin

Issue: Whether plaintiff may use business loss carry-forward from non-surviving corporation in merger to reduce its franchise tax.

Status: Discovery in progress.

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***Reliant Energy Gas Transmission Co., fka Noram Gas Transmission Co. v. Rylander, et al.*** Cause #99-08127

AG Case #991187675

Franchise Tax; Refund

Filed: 07/15/99

Period: 1996

Amount: \$163,758.10

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

L.G. Skip Smith  
David H. Gilliland  
Clark, Thomas & Winters  
Austin

Issue: Whether a business loss carry-forward of a merged corporation may be used to reduce the surviving corporation's franchise tax.

Status: Discovery in progress.

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***Southwestern Bell Telephone Co. v. Rylander, et al.*** Cause #GN204559

AG Case #031730666

Franchise Tax; Protest

Filed: 12/20/02

Period: 1996-1999; 2001

Amount: \$25,000,000.00

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman  
Ray Langenberg  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether interstate access revenues are Texas receipts for franchise tax purposes. Whether treating the revenues as Texas receipts violates the Comptroller's Rule on interstate calls and the due process, equal protection and commerce clauses of the Constitution. Whether other interstate call revenues in border areas are not Texas receipts.

Status: First Amended Original Petition adding 2001 final report filed.

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**Strattec Security Corp. v. Strayhorn, et al.** Cause #GN401136  
AG Case #041954496

Franchise Tax; Refund Filed: 04/08/04 Period: 07/03/95- 06/29/99 Amount: \$1,165,345	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether gross receipts from the sales of locksets are Texas receipts. Whether the throwback rule was correctly applied to Plaintiff's receipts. Plaintiff claims violation of the commerce clause.

Status: Case settled.

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**TGS-NOPEC Geophysical Co. v. Strayhorn, et al.** Cause #GN500637  
AG Case #052114220

Franchise Tax; Protest Filed: 03/01/05 Period: 1997-2000 2001-2003 Amount: \$390,471.26 1,422,008.76	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  R. Scott Wolfrom Jones, Walker, Waechter, Poitevent, Carrère & Denègre, LLP The Woodlands
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Issue: Whether Plaintiff's gross receipts should be treated as receipts from intangibles apportioned based on the location of the payor or the location of the alleged use of data. Whether the transfer of seismic data is a "license" or the transfer of an intangible for franchise tax apportionment purposes. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***Texaco Refining & Marketing (East), Inc. v. Rylander, et al.*** Cause #99-14555  
AG Case #991249228

Franchise Tax; Refund Filed: 12/15/99 Period: 1994 Amount: \$1,028,616.15	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff is entitled to a franchise tax credit for sales tax on manufacturing equipment purchased by a joint venture that it co-owned.

Status: Discovery in progress.

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***Tyson Foods, Inc. v. Strayhorn, et al.*** Cause #GN302279  
AG Case #031818966

Franchise Tax; Refund Filed: 06/27/03 Period: 1992-1997 Amount: \$4,462,424.56	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff may re-state asset values for franchise tax purposes by using straight-line depreciation after it used accelerated depreciation to reduce asset values for federal income and franchise tax purposes before report year 1992. Whether penalty and interest should have been waived because Plaintiff's affiliates had overpayments during the audit period that could have been credited to Plaintiff's deficiencies.

Status: Discovery in progress.

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***Viacom International, Inc. v. Strayhorn, et al.*** Cause #GN402433  
AG Case #041999269

Franchise Tax; Protest Filed: 07/30/04 Period: 1997-1999 Amount: \$754,178.16	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether revenue received from third-party cable television system operators is revenue earned from licensing or from the service of producing, creating, editing, packaging and transmitting 24-hour-per day network programming performed out-of-state. Should revenue from providing these services be considered Texas receipts for franchise tax purposes. Plaintiff also claims violation of due process and the Commerce Clause.

Status: Trial set 07/25/05.

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## Sales Tax

**7-Eleven, Inc. v. Strayhorn, et al.** Cause #GN403369  
AG Case #042046367

Sales Tax; Refund Filed: 10/08/04 Period: 04/01/93- 09/30/96 Amount: \$299,328.98	Asst. AAG Assigned:  Plaintiff's Counsel:	Jeff Mullins  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the purchase of bookkeeping software installed on computers located out-of-state and subsequently shipped to stores in-state qualifies for the sale for resale exemption.

Status: Discovery in progress.

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**AccuTel of Texas, L.P. v. Rylander, et al.** Cause #GN300091  
AG Case #031735236

Sales Tax; Refund Filed: 01/10/03 Period: 06/01/97- 11/30/00 Amount: \$45,658.15	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Christopher Malish Foster & Malish Austin
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Issue: Whether Plaintiff should have been assessed interest and penalty.

Status: Answer filed.

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**Advanta Business Services Corp. v. Rylander, et al.** Cause #GN103463  
AG Case #011514544

Sales Tax; Protest Filed: 10/19/01 Period: 11/01/92- 12/31/97 Amount: \$929,964.11	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  W. Stephen Benesh Deanna E. King Bracewell & Patterson Austin
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Issue: Whether plaintiff's leases were financing leases and not taxable operating leases under Comptroller Rule 3.294(i). Whether the Comptroller's sample was flawed. Alternatively, whether penalty and interest should have been waived.

Status: Discovery in progress.

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***Alpine Industries, Inc. v. Sharp, et al.*** Cause #98-12998

#03-03-0643-CV

#04-0785

AG Case #981080526

Sales Tax; Protest

Filed: 11/20/98

Period: 1994-1998

Amount: \$31,128.62

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Stephen D. Good  
Gregory A. Harwell  
Gardere & Wynne  
Dallas

Issue: Whether Alpine may be regarded as a seller for direct sales made in Texas by independent dealers and whether holding Alpine liable for sales tax violates the commerce clause, due process or equal protection.

Status: Trial held 07/28/03. Summary Judgment, including counter-claim, granted for Comptroller 07/18/03. Final judgment entered 08/15/03. Motion for new trial filed 08/18/03. Plaintiff's Notice of Appeal filed 10/20/03. Appellant's brief filed 02/02/04. Appellees' brief filed 04/02/04. Oral Argument held 04/14/04. Third COA affirmed District Court's Judgment 07/15/04. Petition for Review filed in Tx. Supreme Court 09/29/04. Response filed by Respondents 11/18/04. Petitioner's reply brief filed 12/06/04. On 12/17/04 Court requested briefs on the merits. Petitioner's brief on the merits filed 01/31/05. Respondents' brief on the merits filed 02/18/05. Petitioner's reply brief on the merits filed 03/08/05. Petition denied 04/08/05.

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***Amerada Hess Corp. v. Strayhorn, et al.*** Cause #GN402614

AG Case #042005314

Sales Tax; Refund

Filed: 08/13/04

Period: 01/01/90-

12/31/95

Amount: \$44,500.00

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Mark W. Eidman  
Ray Langenberg  
Scott, Douglass &  
McConnico  
Austin



Issue: Whether submersible pumps, motors, separators, couplings and related down hole equipment are exempt from sales tax under the manufacturing exemption. Whether certain benefits of a membership fee cause the fee to be taxable.

Status: Answer filed.

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***American Oil Change Corp. v. Rylander, et al.*** Cause #99-06374  
AG Case #991175084

Sales Tax; Protest Filed: 06/03/99 Period: 1992-1993 Amount: \$467,142.31	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Gilbert J. Bernal, Jr. Stahl, Bernal & Davies Austin
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Issue: Whether materials are provided by Plaintiff to its customers in the course of its motor vehicle repairs under lump sum contracts, requiring Plaintiff to pay tax on the cost of materials. If Plaintiff's contracts are lump sum, whether Plaintiff is entitled to credit for tax collected from its customers and remitted to the Comptroller. Whether software services are taxable when the seller of the services contributes rather than sells the software itself. Whether software services are exempt under §151.346 as sales between affiliated entities of previously exempt services. Whether interest should have been waived. Whether any of the above issues result in a denial of equal protection, equal and uniform taxation or due process under the federal and state constitutions.

Status: Case settled.

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***Anderson Merchandisers Holding, Inc. v. Strayhorn, et al.*** Cause #GN400421  
AG Case #041921966

Sales Tax; Refund Filed: 02/11/04 Period: 07/01/94- 03/31/98 Amount: \$28,353.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Mark W. Eidman Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether industrial solid waste removal is exempt as a real property service.

Status: Answer filed.

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***Apollo Paint & Body Shop, Inc. v. Strayhorn, et al.*** Cause #GN300886  
AG Case #031770605

Sales Tax; Protest Filed: 03/19/03 Period: 10/01/91- 09/30/98 Amount: \$285,284.13	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Tom Tourtellotte Hance Scarborough Wright Woodward & Weisbart Austin
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Issue: Whether plaintiff performed its repairs under lump-sum contracts. Plaintiff also challenges the constitutionality of Rider 11.

Status: Discovery in progress. Trial setting of 09/20/04 passed by agreement.

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***Aramis Services, Inc. v. Sharp, et al.*** Cause #98-03527  
AG Case #98930349

Sales Tax; Protest Filed: 04/03/98 Period: 04/01/90- 03/31/94 Amount: \$291,196	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones Day Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Discovery in progress.

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***Aramis Services, Inc. v. Rylander, et al.*** Cause #0000384  
AG Case #001273051

Sales Tax; Protest Filed: 02/11/00 Period: 04/01/94- 12/31/97 Amount: \$281,676.36	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Robert Lochridge Jones Day Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived.

Status: Discovery in progress.

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***B&B Gravel Co. v. Strayhorn, et al.*** Cause #GN302323  
AG Case #031831712

Sales Tax; Administrative Appeal	Asst. AAG Assigned:	Blake Hawthorne
Filed: 07/01/03	Plaintiff's Counsel:	Richard S. Browne
Period: 11/01/95-07/31/99		George D. Gordon
Amount: \$99,094.58		Baggett, Gordon & Deison
		Conroe

Issue: Plaintiff claims that the liability assessed is inconsistent with the ALJ's decision and seeks review under the APA.

Status: Discovery in progress. To be dismissed.

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***BGK Operating Co., Inc. v. Strayhorn, et al.*** Cause #GN301224  
AG Case #031786478

Sales Tax; Protest	Asst. AAG Assigned:	Jeff Mullins
Filed: 04/17/03	Plaintiff's Counsel:	Kal Malik
Period: 01/01/99-07/31/02		Robert N. LeMay
Amount: \$28,407.44		Kane, Russell, Coleman & Logan
		Dallas

Issue: Whether Plaintiff is a lump-sum repairer of motor vehicles who should have paid tax on its purchases of oil and filters. Whether charging tax to the Plaintiff results in unconstitutional double taxation.

Status: Discovery in progress. Plaintiff has made a settlement offer.

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***Baldry, Ann dba Annie's Housekeeping Services v. Sharp, et al.*** Cause #95-02389  
AG Case #95234990

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jeff Mullins
Filed: 2/27/95	Plaintiff's Counsel:	Timothy M. Trickey
Period: 04/01/88-06/30/92		The Trickey Law Firm
Amount: \$63,588		Austin

Issue: Whether sales tax is due on maid services provided by maids placed by Plaintiff's service but acting as independent contractors. Also, whether Plaintiff relied, to her detriment, on advice from the Comptroller's Office.

Status: Discovery in progress. Motion to Compel passed on 01/06/05.

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***Bell Bottom Foundation Co. v. Rylander, et al.*** Cause #99-01092  
AG Case #991112186

Sales Tax; Protest	Asst. AAG Assigned:	Natalie McLemore
Filed: 01/29/99	Plaintiff's Counsel:	Timothy M. Trickey
Period: 01/01/91-12/31/94		The Trickey Law Firm
Amount: \$81,571.73		Austin

Issue: Whether taxpayer's sub-contract was a separated contract since the general contractor's construction contract was separated.

Status: Case dismissed for want of prosecution 06/17/03. Motion to Reinstate granted. Negotiating an Agreed Scheduling Order.

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***Bell Helicopter Textron, Inc. v. Rylander, et al.*** Cause #GN200525  
AG Case #021567755

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 02/15/02	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Period: 01/01/90-06/30/93		Stahl, Bernal & Davies
07/01/93-06/30/97		Austin
Amount: \$7,280,079		

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff also seeks attorneys' fees and a declaration that the Comptroller disregarded controlling federal law, violated equal protection or imposed tax on the U.S. government.

Status: Answer filed.

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***Bell Helicopter Textron, Inc. v. Strayhorn, et al.*** Cause #GN204437  
AG Case #041927062

Sales Tax; Refund & Declaratory Judgment Filed: 12/11/02 Period: 07/01/97- 05/31/02 Amount: \$3,000,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Gilbert J. Bernal, Jr. Stahl, Bernal & Davies Austin
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Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff also seeks attorneys' fees and a declaration that the Comptroller disregarded controlling federal law, violated equal protection or imposed tax on the U.S. government. Plaintiff also seeks recovery of attorneys' fees.

Status: Answer filed.

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***Blue Cross & Blue Shield of Texas, Inc. v. Strayhorn, et al.*** Cause #GN401955  
AG Case #041988023

Sales Tax; Refund Filed: 06/21/04 Period: 12/01/88- 05/31/95 Amount: \$3,750,000.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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***Boeing North America, Inc. v. Rylander, et al.*** Cause #GN203340

AG Case #021676804

Sales Tax; Refund Filed: 09/13/02 Period: 01/01/95- 12/31/96 Amount: \$343,487	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Plaintiff claims a sale for resale exemption on items resold to the federal government. Plaintiff also claims a denial of equal protection and an exemption under §151.3111.

Status: Answer filed.

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***Boeing North America, Inc. v. Strayhorn, et al.*** Cause #GN304372

AG Case #031884471

Sales Tax; Refund Filed: 11/10/03 Period: 01/01/95- 12/31/99 Amount: \$500,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Plaintiff claims a sale for resale exemption on items resold to the federal government. Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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**Bonart, Richard C., DVM v. Strayhorn, et al.** Cause #GN400552  
AG Case #041928532

Sales Tax; Protest Filed: 02/20/04 Period: 01/01/02- 12/31/02 Amount: \$50.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Richard C. Bonart (Pro Se) El Paso
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Issue: Whether microchips implanted in animals are exempt as health care supplies and as a therapeutic appliance or device. Plaintiff also claims a denial of equal and uniform protection.

Status: Answer filed.

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**Broadcast Satellite International, Inc. v. Rylander, et al.** Cause #GN103568  
AG Case #011518479

Sales Tax; Protest & Declaratory Judgment Filed: 10/26/01 Period: 01/01/91- 12/31/97 Amount: \$200,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  William E. Bailey Dallas
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Issue: Whether Plaintiff's broadcast services are non-taxable information services under §151.0038(a). Whether Plaintiff's services are not taxable telecommunications services under §151.0103(l) or data processing under §151.0035. Whether the sale or use of Plaintiff's services occurred out-of-state. Whether Plaintiff's experts demonstrated that Plaintiff is exempt under federal law. Plaintiff asserts limitations as to part of the liability and also seeks attorneys' fees.

Status: Answer filed.

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**C & T Stone Co. v. Rylander, et al.** Cause #GN002428  
AG Case #001344233

Sales Tax; Protest Filed: 08/18/00 Period: 04/01/94- 12/31/97 Amount: \$207,454.40	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  William T. Peckham Austin
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Issue: Whether Plaintiff owes sales tax on its sales of limestone to third parties under §151.311(a). Whether Plaintiff detrimentally relied on advice from the Comptroller's Office. Whether exemption certificates covered some sales that were assessed tax. Whether Plaintiff is entitled to the manufacturing exemption under §151.318(g). Whether penalty and interest should be waived.

Status: Discovery in progress. Trial set 09/12/05.

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**Central Power & Light Co. v. Sharp, et al.** Cause #96-11455  
AG Case #96602037

Sales Tax; Refund Filed: 09/20/96 Period: 07/01/86- 12/31/89 Amount: \$32,788	Asst. AAG Assigned:  Plaintiff's Counsel:	Jeff Mullins  L.G. Skip Smith Clark, Thomas & Winters Austin
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Issue: Whether utility pole replacement services are non-taxable maintenance or taxable repair labor.

Status: Discovery in progress. Inactive.

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**Chapal Zenray, Inc. v. Rylander, et al.** Cause #GN204506  
AG Case #031729197

Sales Tax; Protest Filed: 12/16/02 Period: 01/01/94- 12/31/97 Amount: \$210,943.91	Asst. AAG Assigned:  Plaintiff's Counsel:	Jeff Mullins  Mark W. Eidman Ray Langenberg Curtis J. Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether items such as boxes, foam pads and twist ties are not subject to tax pursuant to Tex. Tax Code §151.011 (f)(2) and Rule 3.346 (c)(1)(c) when purchased by a person who uses the items to secure jewelry for shipment out-of-state.

Status: Discovery in progress. Plaintiff to submit Motion for Summary Judgment.

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***Chevron Pipe Line Co. and West Texas Gulf Pipe Line Co. v. Strayhorn, et al.***

Cause #GN304712

AG Case #031899016

Sales Tax; Refund

Filed: 12/12/03

Period: 07/01/91-  
09/30/97

01/01/92-09/30/97

Amount: \$683,979.99  
\$220,773.61

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman  
Ray Langenberg  
Matthew J. Meese  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether installation of cathodic protection devices was new construction or maintenance. Whether excavation and back-filling were non-taxable unrelated services. Whether pipe replacement and recoating was non-taxable maintenance.

Status: Discovery in progress. Trial held 03/23/05. Judgment for the Comptroller.

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***Chevron USA, Inc. v. Strayhorn, et al.*** Cause #GN403978

AG Case #042071324

Sales Tax; Refund

Filed: 12/06/04

Period: 01/01/93-  
06/30/96

Amount: \$10,000,000.00

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman  
Ray Langenberg  
Doug Sigel  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether charges of contractors for erecting, maintaining and dismantling scaffolding are exempt from sales and use tax as a non-taxable service, or taxable as rental of tangible personal property.

Status: Discovery in progress.

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**Church & Dwight Co., Inc. v. Rylander, et al.** Cause #GN000525  
AG Case #001258201

Sales Tax; Refund Filed: 01/12/00 Period: 10/01/90- 12/31/93 Amount: \$64,868.50	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Robert C. Alden Phillip L. Sampson, Jr. Bracewell & Patterson Austin
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Issue: Whether Plaintiff owes use tax on promotional materials shipped from out-of-state. Whether the Comptroller's imposition of use tax is invalid because Plaintiff made no use of the materials in Texas. Whether Rule 3.346(b)(3)(A) is invalid. Whether the tax violates the Commerce and Due Process Clauses of the United States Constitution.

Status: Answer filed.

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**Clinique Services, Inc. v. Sharp, et al.** Cause #98-03533  
AG Case #98930330

Sales Tax; Protest Filed: 04/03/98 Period: 04/01/90- 03/31/94 Amount: \$519,192	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones Day Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Discovery in progress.

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**Clinique Services, Inc. v. Rylander, et al.** Cause #GN000376  
AG Case #001273069

Sales Tax; Protest Filed: 02/11/00 Period: 04/01/94- 03/31/98 Amount: \$650,361.82	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Robert Lochridge Jones Day Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived.

Status: Discovery in progress.

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***Clinique Services, Inc. v. Strayhorn, et al.*** Cause #GN500049  
AG Case #052085933

Sales Tax; Protest & Declaratory Judgment Filed: 01/06/05 Period: 04/01/98- 03/31/02 Amount: \$654,245.96	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David Cowling Maryann E. Landrigan Jones Day Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived. Plaintiff also claims violation of rights under the Commerce and Due Process Clauses, and right to equal and uniform taxation. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***Coastal Refining & Marketing, Inc. v. Sharp, et al.*** Cause #98-03540  
AG Case #98930321

Sales Tax; Protest Filed: 04/03/98 Period: 01/01/89- 06/30/89 07/01/89-12/31/91 Amount: \$1,635,965	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Jasper G. Taylor, III Fulbright & Jaworski Houston  Joe W. Cox Coastal States Management Corp. Houston
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Issue: Whether certain work performed by Plaintiff is new construction under a lump sum contract and thus not taxable.

Status: Discovery in progress. Plaintiff has submitted settlement offer.

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***Cosmair, Inc. v. Strayhorn, et al.*** Cause #GN302009  
AG Case #031816135

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 06/09/03	Plaintiff's Counsel:	David Cowling
Period: 07/01/96- 12/31/98		Robert Lochridge
Amount: \$1,322,536.67		Jones Day
		Dallas

Issue: Whether Plaintiff owes use tax on items transferred free of charge that are subsequently brought into Texas. Plaintiff specifically challenges whether: 1) "use" includes distribution; 2) use was only out-of-state where control transferred; 3) longstanding policy may be changed; 4) Rule 3.346 does not support tax on promotional materials; 5) use tax applies without title or possession; 6) no consideration for transfer; 7) Rule 3.346(b)(3)(A) is invalid; 8) tax is barred by Commerce, Due Process and Equal Protection Clauses; and 9) resale exemption applies. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***Delta Air Lines, Inc. v. Strayhorn, et al.*** Cause #GN400439  
AG Case #041925868

Sales Tax; Refund	Asst. AAG Assigned:	Christopher Jackson
Filed: 02/13/04	Plaintiff's Counsel:	Mark W. Eidman
Period: 02/01/93- 12/31/96		Ray Langenberg
Amount: \$1,642,267.15		Scott, Douglass & McConnico
		Austin

Issue: Whether Plaintiff's purchases of janitorial and building maintenance services being resold under a lease agreement are exempt under the sale for resale exemption. Whether Plaintiff's purchases of mechanical maintenance services were exempt as taxable services purchased in the performance of a real property contract for an exempt entity.

Status: Answer filed.

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***Dillard's, Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Rylander, et al.*** Cause #GN203937  
AG Case #021703947

Sales Tax; Protest Filed: 10/30/02 Period: 07/01/93- 01/31/96 02/01/96-11/30/96 Amount: \$1,100,000+	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff's sewing machines and other property used to alter clothing qualify for the manufacturing exemption. Whether Plaintiff is entitled to a refund of tax on packaging supplies, non-taxable services, and industrial solid waste disposal. Whether the Comptroller improperly applied a franchise tax credit to the assessed amount.

Status: Answer filed.

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***Dillard's Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Strayhorn, et al.*** Cause #GN304838 (Consolidated with *Dillard's, Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Rylander, et al.*, Cause #GN203937)  
AG Case #041904590

Sales Tax; Refund Filed: 12/23/03 Period: 07/01/93- 01/31/96 02/01/96-11/30/96 Amount: \$1,172,784.29	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff's sewing machines and other property used to alter clothing qualify for the manufacturing exemption. Whether Plaintiff is entitled to a refund of tax on packaging supplies, non-taxable services, industrial solid waste disposal, and sale for resale items.

Status: Motion to consolidate cases granted 11/23/04. See *Dillard's Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Rylander, et al.*, Cause No. GN203937.

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**DuPont Photomasks, Inc. v. Strayhorn, et al.** Cause #GN303695  
#03-04-00822-CV  
AG Case #031855117

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 09/12/03	Plaintiff's Counsel:	Larry F. York
Period: 01/01/96- 10/31/97		Susan F. Gusky
Amount: \$299,987.35		York, Keller & Field Austin
		Jennifer K. Patterson Austin

Issue: Whether Plaintiff's purchase of a cleanroom should have been an exempt sale for resale. Whether the lease of the cleanroom was incidental to the lease of the building in which it was housed and whether Rule 3.294(k)(1) is invalid. Whether the Comptroller's final decision is arbitrary and violates due process, equal and uniform taxation, and equal protection. Whether Rider 11 is unconstitutional as: (1) an amendment to substantive law; (2) a violation of due process, equal protection and open courts; and (3) an unconstitutional taking. Plaintiff seeks attorney's fees and demands a jury trial.

Status: Discovery in progress. Motion for Summary Judgment hearing held 09/23/04. Rule upheld. Both Motions denied. Trial Judgment signed 11/29/04. Notice of Appeal filed by Plaintiff 12/17/04. Appellant's brief due 03/07/05. Appellees' brief due 04/13/05.

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**EFW, Inc. v. Rylander, et al.** Cause #GN200906  
AG Case #021579578

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 03/19/02	Plaintiff's Counsel:	Mark W. Eidman
Period: 04/94-03/31/98		Ray Langenberg
Amount: \$123,440.25		Doug Sigel
		Curtis J. Osterloh
		Scott, Douglass & McConnico Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***ELC Beauty LLC, as Successor-in-Interest to Aramis Services, Inc. v. Rylander, et al.*** Cause #GN203514  
AG Case #021681226

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 09/26/02	Plaintiff's Counsel:	David Cowling
Period: 01/01/98-12/31/00		Robert Lochridge
Amount: \$284,508.69		Jones Day
		Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived.

Status: Answer filed.

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***ELC Beauty, LLC, as Successor-in-Interest to Origins Services Inc. v. Strayhorn, et al.*** Cause #GN500047  
AG Case #052085966

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 01/06/05	Plaintiff's Counsel:	David Cowling
Period: 03/01/98-06/30/01		Maryann E. Landrigan
Amount: \$750,946.09		Jones Day
		Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived. Plaintiff also claims violation of rights under the Commerce and Due Process Clauses, and right to equal and uniform taxation. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***ELC Beauty, LLC, as a Successor-in-Interest to Estee Lauder Services Inc. v. Strayhorn, et al.*** Cause #GN500048  
AG Case #052085990

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 01/06/05	Plaintiff's Counsel:	David Cowling
Period: 07/01/99- 06/30/01		Maryann E. Landrigan
Amount: \$586,255.47		Jones Day Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived. Plaintiff also claims violation of rights under the Commerce and Due Process Clauses, and right to equal and uniform taxation. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***E. de la Garza, Inc. v. Rylander, et al.*** Cause #GN003589  
AG Case #0011395316

Sales Tax; Protest	Asst. AAG Assigned:	Scott Simmons
Filed: 12/15/00	Plaintiff's Counsel:	Rudy de la Garza
Period: 01/01/93- 12/31/96		Brownsville
Amount: \$83,138.14		

Issue: Whether sales of grocery bags and sacks are not taxable when sold to grocery stores who have provided a blanket sale for resale certificate. Plaintiff also complains of audit calculation errors.

Status: Dismissed for Want of Prosecution 06/25/04. Plaintiff filed Motion to Retain 07/08/04. Motion to Reinstate filed 08/29/04; granted 10/04/04. Plaintiff's Partial Motion for Summary Judgment hearing held 11/23/04; denied. Defendants' Motion for Summary Judgment granted in full 01/21/05. Final judgment being prepared.

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***Ebrahim, Suleiman S. v. Strayhorn, et al.*** Cause #GN500567  
AG Case #052113388

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jeff Mullins
Filed: 02/22/05	Plaintiff's Counsel:	Lynn Hamilton Butler
Period: 01/01/96-02/25/02		Robert L. Spurck
Amount: \$43,847.15		Brown McCarroll, LLP Austin

Issue: Whether Plaintiff is liable for sales tax assessed against his father's business. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***Estee Lauder Services, Inc. v. Sharp, et al.*** Cause #98-03525  
AG Case #98930358

Sales Tax; Protest	Asst. AAG Assigned:	Christopher Jackson
Filed: 04/03/98	Plaintiff's Counsel:	David E. Cowling
Period: 01/01/89-09/30/92		Jones Day
Amount: \$472,225		Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Answer filed.

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***Estee Lauder Services, Inc. v. Sharp, et al.*** Cause #98-03524  
AG Case #98930367

Sales Tax; Protest	Asst. AAG Assigned:	Christopher Jackson
Filed: 04/03/98	Plaintiff's Counsel:	David E. Cowling
Period: 10/01/92-03/31/96		Jones Day
Amount: \$748,773		Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Discovery in progress. Non-jury trial set 11/07/05.

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***Estee Lauder Services, Inc. v. Rylander, et al.*** Cause #GN101312  
AG Case #011439874

Sales Tax; Protest Filed: 05/01/01 Period: 04/01/96- 06/30/99 Amount: \$614,814.78	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Robert Lochridge Jones Day Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Answer filed.

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***Ethicon, Inc. v. Strayhorn, et al.*** Cause #GN304779  
AG Case #041904616

Sales Tax; Refund Filed: 12/18/03 Period: 01/01/96- 12/31/99 01/01/94-12/31/95 Amount: \$52,616.94	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Mark W. Eidman Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff leased real property not subject to the sales and use tax.

Status: Plaintiff's Motion for Summary Judgment hearing set 11/04/04 was passed.  
Settlement negotiations in progress.

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***F M Express Food Mart, Inc., and Fouad Hanna Mekdessi v. Rylander, et al.***  
Cause #GN002724  
AG Case #001353960

Sales Tax; Injunction Filed: 09/15/00 Period: 12/01/90- 11/30/97 Amount: \$360,671.05	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Percy L. "Wayne" Isgitt Law Offices of Percy L. "Wayne" Isgitt, P.C. Houston
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Issue: Whether Comptroller's "estimated audit" is invalid. Whether Plaintiffs are entitled to an injunction of collection and of cancellation of their sales tax permits. Whether Tax Code §§112.051, 112.052, 112.101 and 112.108 are unconstitutional violations of the open courts provision. Plaintiffs seek a re-audit and a refund of money paid under protest in excess of the re-audited amount.

Status: Discovery in progress. Summary Judgment hearing postponed.

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***FXI Corp. v. Rylander, et al.*** Cause #GN102724  
AG Case #011492857

Sales Tax; Refund Filed: 08/22/01 Period: 10/01/94- 06/30/98 Amount: \$51,832.31	Asst. AAG Assigned:  Plaintiff's Counsel:	Jeff Mullins  Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff's boxes and packing materials are exempt as items shipped out-of-state. Whether denial of the exemption violates equal protection.

Status: Discovery in progress. Hearing on Cross-Motions for Summary Judgment held 02/22/05. Summary Judgment granted for State.

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***Fiesta Texas Theme Park, Ltd. v. Sharp, et al.*** Cause #98-02407 (Consolidated with *Fiesta Texas Theme Park, Ltd. v. Sharp, et al.* Cause #GN200563)  
AG Case #98914152

Sales Tax; Refund Filed: 03/05/98 Period: 10/01/90- 04/30/93 Amount: \$328,829	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether prizes awarded by Plaintiff to successful contestants of coin-operated as well as non-coin operated games are purchased for resale. Whether sales tax constitutes double taxation on machines on which occupation tax is paid and on non-coin games, admission to which is taxed. Advertising and sewing services are not taxable.

Status: See *Fiesta Texas Theme Park, Ltd. v. Sharp, et al.* Cause #GN200563.

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***Fiesta Texas Theme Park, Ltd. and San Antonio Theme Park, L.P. v. Rylander, et al.*** Cause #GN200563

AG Case #021567789

Sales Tax; Refund Filed: 02/20/02 Period: 05/01/93- 03/01/96 03/01/96-02/28/98 Amount: \$592,759.97 \$349,933.08	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether prizes awarded by Plaintiff to successful contestants of coin-operated as well as non-coin operated games are purchased for resale. Whether sales tax constitutes double taxation on machines on which occupation tax is paid and on non-coin games, admission to which is taxed. Advertising and sewing services are not taxable. Whether the assessment against Fiesta was outside limitations.

Status: Case settled.

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***Garza, Lawrence v. Sharp, et al.*** Cause #98-07607

AG Case #981001886

Sales Tax; Protest Filed: 07/17/98 Period: 01/01/93- 09/30/95 Amount: \$83,910	Asst. AAG Assigned:  Plaintiff's Counsel:	Jeff Mullins  Stephen P. Dillon Lindeman & Dillon Houston
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Issue: Whether the Comptroller used the proper sampling procedure and whether Plaintiff was correctly notified of the procedure to be used.

Status: Discovery in progress. Trial setting passed by agreement. Inactive.

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**General Dynamics Corp. v. Rylander, et al.** Cause #GN201322  
AG Case #021598057

Sales Tax; Refund Filed: 04/22/02 Period: 09/01/88- 11/30/91 Amount: \$7,000,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Ira A. Lipstet Matthew G. Grimmer Jenkins & Gilchrist Austin
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Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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**General Dynamics Corp. v. Rylander, et al.** Cause #GN201323  
AG Case #021598073

Sales Tax; Refund Filed: 04/22/02 Period: 12/01/91- 02/28/93 Amount: \$4,500,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Ira A. Lipstet Matthew G. Grimmer Jenkins & Gilchrist Austin
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Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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**Gift Box Corp. of America, Inc. v. Rylander, et al.** Cause #GN102934  
AG Case #011492865

Sales Tax; Protest Filed: 09/05/01 Period: 10/91-03/97 Amount: \$359,929.22	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Ira A. Lipstet Matthew G. Grimmer Jenkins & Gilchrist Austin
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Issue: Whether additional resale certificates should have been accepted for Plaintiff's sales of boxes and packaging materials.

Status: Plaintiff to make settlement offer.

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**Graybar Electric Co., Inc. v. Sharp, et al.** Cause #97-01795  
AG Case #97682966

Sales Tax; Protest Filed: 02/13/97 Period: 01/01/88- 12/31/91 Amount: \$107,667	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the sample audit resulted in a correct assessment.

Status: Settlement negotiations in progress.

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**Grocers Supply-Institutional-Convenience, Inc. v. Rylander, et al.** Cause  
#GN300904  
AG Case #031782931

Sales Tax; Refund & Declaratory Judgment Filed: 03/20/03 Period: 06/01/95- 05/31/98 Amount: \$79,688.23	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Judy M. Cunningham Attorney at Law Austin
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Issue: Whether Plaintiff's purchase of electricity used to lower the temperature of food products is exempt as electricity used in processing.

Status: Answer filed.

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***H.J. Wilson Co., Inc. v. Sharp, et al.*** Cause #98-11574  
AG Case #981063332

Sales Tax; Protest Filed: 10/13/98 Period: 07/01/90- 12/31/93 Amount: \$1,076,019	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones Day Dallas
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Issue: Whether the purchase of sales catalogs printed out-of-state and shipped to Plaintiff's customers in Texas (at no charge to the customer) incur sales tax.

Status: On hold. Plaintiff filed bankruptcy in Tennessee 03/25/99. Motion to dismiss by court held 05/07/01. Plaintiff filed motion to retain 04/25/01; granted order to retain 08/14/01 on DWOP, again on 07/25/02, and again 01/16/03.

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***Herndon Marine Products, Inc. v. Sharp, et al.*** Cause #91-14786  
AG Case #91164788

Sales Tax; Refund Filed: 10/18/91 Period: 01/01/87 - 03/31/90 Amount: \$62,465	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  John D. Bell Wood, Boykin & Wolter Corpus Christi
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Issue: Whether predominant use of electricity from Plaintiff's meter is exempt. Whether burden of proof in administrative hearing should be clear and convincing evidence or preponderance of the evidence.

Status: Special exceptions and answer filed.

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***Hollon Oil Co. v. Strayhorn, et al.*** Cause #GN303895  
AG Case #031866668

Sales Tax; Protest Filed: 09/30/03 Period: 01/01/99- 12/31/02 Amount: \$144,937.05	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Gilbert J. Bernal, Jr. Stahl, Bernal & Davies Austin
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Issue: Whether Plaintiff owes sales and use tax on materials which Plaintiff purchased for installation in customers' vehicles. Whether Plaintiff is entitled to a credit for sales tax collected from customers for said materials.

Status: Answer filed.

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***Houston Wire & Cable Co. v. Strayhorn, et al.*** Cause #GN500581  
AG Case #052113057

Sales Tax; Refund  
Filed: 02/23/05  
Period: 08/01/97-  
12/31/01  
Amount: \$160,596.03

Asst. AAG Assigned:

Jeff Mullins

Plaintiff's Counsel:

Jerry L. Starkey  
Houston

Issue: Whether wire, cable and reels purchased, customized and sold to wholesalers as non-returnable are exempt from sales tax under the manufacturing exemption and sale-for-resale exemption.

Status: Answer filed.

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***JBI, Inc. v. Rylander, et al.*** Cause #GN203450  
AG Case #021681218

Sales Tax; Protest  
Filed: 09/20/02  
Period: 01/01/93-  
08/31/99  
Amount: \$1,046,033.09

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

W. Stephen Benesh  
James E. Boice  
Bracewell & Patterson  
Austin

Issue: Whether the Comptroller assessed tax on transactions that were sales for resale or on which use tax had already been paid.

Status: Discovery in progress.

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**JBS Packing Co., Inc. v. Strayhorn, et al.** Cause #GN402498

AG Case #042003590

Sales Tax; Refund

Filed: 08/05/04

Period: 12/01/96-  
12/31/99

Amount: \$1,820.48

Asst. AAG Assigned:

Plaintiff's Counsel:

Jeff Mullins

Mike Cichowski  
Port Arthur

Issue: Whether parts and services for an ice machine, a hydro-blasting machine, and for a steam cleaning machine are exempt from sales tax under the manufacturing exemption.

Status: Settlement offer made.

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**J.C. Penney Co., Inc. v. Strayhorn, et al.** Cause #GN300883

AG Case #031770613

Sales Tax; Refund &  
Declaratory Judgment

Filed: 03/19/03

Period: 01/01/91-  
03/31/93

Amount: \$951,802.17

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

David Cowling  
Robert Lochridge  
Jones Day  
Dallas

Issue: Whether Plaintiff owes use tax on paper, ink and the printing of catalogs printed out-of-state. Whether local use tax in McAllen, Texas applies to Plaintiff's aircraft. Alternatively, whether the printing service is performed outside Texas. Whether a sales and use tax on the catalogs violates the Commerce Clause, due process or equal protection. Plaintiff also seeks declaratory relief and attorney's fees.

Status: Answer filed.

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**Jerman Cookie Co. v. Rylander, et al.** Cause #GN101492

AG Case #011451598

Sales Tax; Refund and  
Declaratory Judgment

Filed: 05/16/01

Period: 12/01/92 through  
03/31/97

Amount: \$43,121.45

Asst. AAG Assigned:

Plaintiff's Counsel:

Natalie McLemore

Steve M. Williard  
L. Don Knight  
Meyer, Knight &  
Williams  
Houston

Issue: Whether plaintiff's sale of cookies and brownies is taxable under Tax Code §151.314 and Comptroller Rule 3.293. Plaintiff also seeks review under the Administrative Procedures Act and the UDJA, and seeks attorneys' fees.

Status: Amended Petition filed. Discovery in progress.

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***Kennedy, Gary G. dba Kennedy's Korner v. Rylander, et al.*** Cause #GN202992  
AG Case #021663539

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 08/22/02	Plaintiff's Counsel:	Gary G. Kennedy (Pro Se)
Period: N/A		Austin
Amount: \$N/A		

Issue: Whether Plaintiff may enjoin fraud audit subpoena and suspension of his sales and mixed beverage permits.

Status: Counter-claim filed. Taxpayer filed bankruptcy 10/15/03.

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***Kroger Co., The v. Strayhorn, et al.*** Cause #GN403582  
AG Case #042058032

Sales Tax; Refund	Asst. AAG Assigned:	Jeff Mullins
Filed: 10/28/04	Plaintiff's Counsel:	Judy M. Cunningham Attorney at Law
Period: 01/01/94- 06/30/97		Austin
Amount: \$366,142.79		

Issue: Whether electricity used in a manufacturing process is exempt from sales tax. Whether the manufacturing process used by Plaintiff results in a physical change to tangible personal property being resold.

Status: Answer filed.

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***LTV Aerospace & Defense Co. v. Rylander, et al.*** Cause #GN203321  
AG Case #021676770

Sales Tax; Refund & Declaratory Judgment Filed: 09/13/02 Period: 06/01/86- 08/31/92 Amount: \$8,576,046	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Alan E. Sherman, Esq. Dallas
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Issue: Plaintiff claims a sale for resale exemption on items resold to the federal government. Plaintiff also claims a denial of equal protection and that the incidence of the tax falls on the federal government. Plaintiff claims that the Comptroller violated the commerce clause by failing to follow title-passing regulations and also seeks a declaratory judgment and attorneys' fees.

Status: Answer filed.

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***Laredo Coca-Cola Bottling Co., and Coca-Cola Enterprises, Inc. v. Strayhorn, et al.*** Cause #GN300575  
AG Case #031759657

Sales Tax; Refund Filed: 02/21/03 Period: 05/01/93- 06/30/96 10/01/91-06/30/96 01/01/90-12/31/92 07/01/91-06/30/96 Amount: \$6,726 \$591,086	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Mark W. Eidman Ray Langenberg Curtis Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether post-mix machines qualify for manufacturing tax exemption. Whether some of the machines also qualify for the sale for resale exemption, because plaintiff received consideration even if not valued in money.

Status: Answer filed.

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***Laredo Coca-Cola Bottling Co., and Coca-Cola Enterprises, Inc. v. Strayhorn, et al.*** Cause #GN401379  
AG Case #041964941

Sales Tax; Refund Filed: 04/30/04 Period: 05/01/93- 06/30/96 10/01/91-06/30/96 01/01/90-12/31/92 07/01/91-06/30/96 Amount: \$18,579.66 \$443,299.77	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Mark W. Eidman Ray Langenberg Curtis Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff owes sales tax on the purchase of money validators due to the integration of the validators into the final product, the vending machine.

Status: Answer filed.

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***Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al.*** Cause #98-11834  
AG Case #981064363

Sales Tax; Protest & Declaratory Judgment Filed: 10/20/98 Period: 08/1-30/98 Amount: \$2,054	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  John Christian Vinson & Elkins Austin
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Issue: Whether sales tax is due on the portion of country club membership fees designated as "capital improvement fees" and "gratuities."

Status: Dismissed for Want of Prosecution 07/25/02. Reopened, as plaintiff filed a Motion for Reinstatement, granted 10/31/02.

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***Laredo Pizza, Inc., and Samuel L. Alford, and L & H Pacific, L.L.C. v. Strayhorn, et al.*** Cause #GN401507  
AG Case #041971482

Sales Tax; Protest Filed: 05/12/04 Period: 07/01/92- 08/31/95 Amount: \$34,965.35	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Richard L. Rothfelder Michael C. Falick Rothfelder & Falick, LLP Houston
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Issue: Whether prizes awarded by Plaintiff to successful contestants of amusement machines were purchased for resale and exempt from sales tax. Whether the sale of food, beverage and party packages is taxable as food and beverage or non-taxable as amusement services. Whether assets transferred from one subsidiary to another are exempt from sales tax as an "occasional sale."

Status: Answer filed.

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**Lee Construction and Maintenance Co. v. Rylander, et al.** Cause #99-01091  
AG Case #991112160

Sales Tax; Protest Filed: 01/29/99 Period: 01/01/92- 12/31/95 Amount: \$31,830.47	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Various issues, including credits for bad debts, tax paid, tax on new construction and tax paid in Louisiana, resale exemptions and waiver of penalty and interest.

Status: Settlement negotiations pending.

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**Levy, Tara, et al. v. OfficeMax, Inc. and Best Buy Stores, L.P.** Cause #GN201252  
AG Case #041926635

Sales Tax; Declaratory Judgment Filed: Period: Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark L. Perlmutter C Brooks Schuelke Perlmutter & Schuelke, LLP Austin
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Issue: Plaintiff claims a refund for the class of persons who paid sales tax on rebates. Plaintiff seeks declaratory judgment interpreting Texas Tax Code Sections pertaining to cash discounts and exemption from sales tax.

Status: Class-action suit. Comptroller named defendant. Comptroller's Plea to the Jurisdiction and Plaintiffs' Motion for Declaratory Judgment heard 10/19/04. Plea granted. Court requested briefs to address whether any part of case survives. Amended Order dismisses all claims against the Comptroller.

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***Liaison Resources, L.P., and David S. Claunch v. Rylander, et al.*** Cause  
#GN202795  
AG Case #021663307

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Scott Simmons
Filed: 08/14/02	Plaintiff's Counsel:	James F. Martens
Period: 1991-1999		Christina A. Mondrik
Amount: \$136,659.08		James F. Martens & Associates Austin

Issue: Whether Plaintiffs owe tax on computer-related temporary services. Whether the Comptroller improperly assessed tax on items sold out of state or on sales for resale. Plaintiffs also claim a violation of equal protection and seek attorneys' fees.

Status: Case to be settled. Final Judgment being drafted.

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***Local Neon Co., Inc. v. Rylander, et al.*** Cause #99-15042  
#03-04-00261-CV  
AG Case #001254036

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 12/31/99	Plaintiff's Counsel:	James D. Blume
Period: 01/01/88- 03/31/95		Jennifer S. Stoddard
Amount: \$34,390.24		Blume & Stoddard Dallas
		Judy M. Cunningham Attorney at Law Austin

Issue: Whether Plaintiff was doing business in Texas by delivering and installing its signs that were sold under contract negotiated outside of Texas. Whether Plaintiff is entitled to declaratory judgment and attorneys' fees.

Status: Plea to the Jurisdiction granted to State 04/07/04. Notice of Appeal filed 04/29/04. Clerk's Record filed 06/04/04. Appellant's brief filed 07/01/04. Appellees' brief filed 08/02/04. Oral Argument requested. Submitted on Briefs 12/06/04.

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**Lockheed Martin Corp., as Successor to Lockheed Martin Vought Systems Corp. and Loral Vought Systems Corp. v. Rylander, et al.** Cause #GN103525  
AG Case #011523446

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 10/24/01	Plaintiff's Counsel:	Mark W. Eidman
Period: 09/01/92-11/30/95		Scott, Douglass & McConnico
Amount: \$2,680,000		Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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**Lockheed Corp. v. Rylander, et al.** Cause #GN201000  
AG Case #021583745

Sales Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 03/26/02	Plaintiff's Counsel:	Mark W. Eidman
Period: 03/01/93-01/31/96		Scott, Douglass & McConnico
Amount: \$7,000,000		Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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**Lockheed Martin Corp. v. Rylander, et al.** Cause #GN200999  
AG Case #021583737

Sales Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 03/26/02	Plaintiff's Counsel:	Mark W. Eidman
Period: 01/01/96-09/30/97		Scott, Douglass & McConnico
Amount: \$3,500,000		Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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**Lockheed Martin Corp., Successor to Lockheed Martin Vought Systems Corp. v. Rylander, et al.** Cause #GN201725  
AG Case #021620414

Sales Tax; Refund &  
Declaratory Judgment  
Filed: 05/23/02  
Period: 12/01/95-  
06/30/97  
Amount: \$1,857,000

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Mark W. Eidman  
Ray Langenberg  
Doug Sigel  
Curtis J. Osterloh  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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**Lockheed Martin Corp. v. Strayhorn, et al.** Cause #GN300420  
AG Case #031751118

Sales Tax; Refund &  
Declaratory Judgment  
Filed: 02/10/03  
Period: 07/01/97-  
07/31/01  
Amount: \$2,837,000

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Mark W. Eidman  
Ray Langenberg  
Doug Sigel  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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**Lockheed Martin Kelly Aviation Center, Inc. v. Strayhorn, et al.** Cause #GN400625  
AG Case #041928870

Sales Tax; Refund Filed: 02/26/04 Period: 01/01/99- 12/31/00 Amount: \$1,025,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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**MG Building Materials, Ltd. v. Strayhorn, et al.** Cause #GN301686  
AG Case #031802978

Sales Tax; Protest Filed: 05/23/03 Period: 01/01/96- 04/30/99 Amount: \$2,015,426.24	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Douglas W. Sanders Elizabeth A. Copeland Jeffrey T. Cullinane Oppenheimer, Blend, Harrison & Tate San Antonio
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Issue: Whether Plaintiff's audit was flawed because the Comptroller improperly failed to consider late resale or other exemptions in the sample. Whether the sample methodology and 60-day letter made it impossible for Plaintiff to show that the assessment was wrong. Plaintiff also requests a jury trial.

Status: Discovery in progress. Court denied both cross-motions for partial summary judgment 08/26/04. Plaintiff's Motion to Compel denied 11/18/04. Trial setting of 03/07/05 postponed. Negotiations in progress.

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***Mars, Inc. v. Strayhorn, et al.*** Cause #GN401349  
AG Case #041965336

Sales Tax; Refund  
Filed: 04/29/04  
Period: 01/01/94-  
09/30/97  
Amount: \$726,024

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Mark W. Eidman  
Ray Langenberg  
R. Eric Hagenswold  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether Plaintiff's purchases of certain equipment and related items are exempt from sales tax under the manufacturing exemption. Whether Plaintiff's purchases of installation labor are exempt as purchases of non-taxable stand-alone installation services.

Status: Answer filed.

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***Maxus Energy Corp. as Successor in Interest to Maxus Corporate Co. v. Strayhorn, et al.*** Cause #GN404187  
AG Case #052082260

Sales Tax; Protest &  
Declaratory Judgment  
Filed: 12/27/04  
Period: 09/01/95-  
12/31/98  
Amount: \$1,794,780.29

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

David Cowling  
Robert Lochridge  
Jones Day  
Dallas

Issue: Whether items purchased by Plaintiff to be exported outside of the US by a freight consolidator and not invoiced individually are exempt from sales and use tax. Whether the Comptroller's auditing techniques can assess tax on transactions previously audited and non-assessed. Whether Plaintiff "purchased" or "rented" software, and whether services provided to implement the software are taxable. Whether services performed on tangible personal property provided by a third party are exempt from sales and use tax. Plaintiff claims violation of equal and uniform taxation, and due process. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Answer filed.

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**Medaphis Physicians Services Corp. v. Sharp, et al.** Cause #94-11610  
AG Case #94149390

Sales Tax; Protest and Declaratory Judgment Filed: 09/16/94 Period: 05/01/94- 06/30/94 Amount: \$17,063	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Garry M. Miles Vinson & Elkins Austin
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Issue: Whether Plaintiff's services are taxable (1) insurance services, (2) debt collection services, or (3) data processing services, and whether Rules 3.330, 3.354, and 3.355 exceed the Comptroller's rule making authority.

Status: Inactive.

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**Mitchell, Christia Parr v. Rylander, et al.** Cause #GN201330  
AG Case #021604541

Sales Tax; Refund Filed: 04/22/02 Period: 01/01/95- 12/31/98 Amount: \$160,870.48	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Christia Parr Mitchell (Pro Se) San Antonio
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Issue: Whether plaintiff may recover a sales tax refund for taxes paid by a corporation controlled by her ex-husband when the liability was paid pursuant to orders of the court in which the divorce was granted.

Status: Inactive.

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**Nachhattar Tejpal Legha Enterprises, Inc. v. Rylander, et al.** Cause #GN203398  
AG Case #021676812

Sales Tax; Refund & Declaratory Judgment Filed: 09/18/02 Period: 04/01/97- 07/31/99 Amount: \$15,841	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  James F. Martens James F. Martens & Associates Austin
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Issue: Plaintiff claims that the Comptroller wrongfully assessed additional sales tax by misstating Plaintiff's gross taxable receipts and wrongfully failed to entertain Plaintiff's refund claim. Plaintiff also seeks a declaratory judgment and attorneys' fees.

Status: Discovery in progress. Motion for Summary Judgment and Plea to the Jurisdiction and Special Exceptions hearing set 08/10/05. Trial set 08/22/05.

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***Neiman Marcus Group, Inc. v. Sharp, et al.*** Cause #93-10279-A  
AG Case #93340549

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 08/26/93	Plaintiff's Counsel:	David E. Cowling
Period: 01/01/87- 03/31/90		Jones Day Dallas
Amount: \$1,046,465		

Issue: Plaintiff's customers buy gifts from Plaintiff outside Texas and have the gifts delivered by common carrier to Texas "donees." Should the Comptroller have assessed use tax on these "gift sends." Second Issue: whether tax is due on certain remodeling services. Plaintiff asks for attorneys fees under 42 USC §§1983 and 1988.

Status: Agreed judgment signed 03/11/96 on the gift send issue. An agreed order for severance was signed on 03/11/96 on the remodeling issues and the attorneys' fees. Cause renumbered 93-10279-A. State filed a plea to the jurisdiction on attorneys' fees on 10/06/93.

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***Neiman Marcus Group, Inc., The v. Rylander, et al.*** Cause #GN102403  
AG Case #011478294

Sales Tax; Protest	Asst. AAG Assigned:	Jim Cloudt
Filed: 08/01/01	Plaintiff's Counsel:	Mark W. Eidman
Period: 04/01/90- 12/31/93		Ray Langenberg
Amount: \$1,908,969.01		Scott, Douglass & McConnico Austin

Issue: Whether printing charges for catalogs are not subject to use tax because: (a) the printing services were not used in Texas, (b) the printed catalogs were gifts for which title transferred outside Texas, (c) plaintiff did not have sufficient control to be a Texas user, (d) the statute does not include distribution in the definition of use, (e) no use tax is due under the doctrine of *Morton Bldgs.*, (f) Rule 3.346(b)(3)(A) does not apply or is invalid, and/or (g) Tax Code 151.3111(a) exempts the printing service. Whether photograph retouching is (a) a sale of tangible personal property, or (b) repair, remodeling, maintenance or restoration of tangible personal property, or (c) exempt under Tax Code 151.330(e). Also, whether remodeling contracts were tax included and whether sampling was improper. Plaintiff seeks attorneys fees.

Status: Answer filed.

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***North American Intelcom, Inc., et al. v. Sharp, et al.*** Cause #97-05318  
AG Case #97733563

Sales Tax; Refund Filed: 05/02/97 Period: 04/01/91- 05/31/95 Amount: \$2,029,180	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Whether care, custody, and control of Plaintiff's public telephone equipment passed to their customers, so that Plaintiff could buy the equipment tax free for resale.

Status: Inactive.

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***North Texas Asset Management, Inc. v. Sharp, et al.*** Cause #94-08603  
AG Case #94113766

Sales Tax; Declaratory Judgment Filed: 07/14/94 Period: 05/02/91- 12/31/91 Amount: \$24,307	Asst. AAG Assigned:  Plaintiff's Counsel:	James Parsons  Judy M. Cunningham Attorney at Law Austin
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Issue: Whether a sale of a business approved by the SBA (which held a lien and received the proceeds) is tantamount to a foreclosure sale so that no successor liability should attach.

Status: Inactive. Parties are involved in informal discussions to resolve or eliminate issues currently in controversy.

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***Northrop Grumman Systems Corp. (Successor to Northrop Grumman Corp. and Vought Aircraft Co.) v. Rylander, et al.*** Cause #GN201344  
AG Case #021607155

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 05/01/02	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Period: 09/01/92- 11/30/95		Stahl, Bernal & Davies Austin
Amount: \$1,600,000		

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff claims that collection of the tax violates the supremacy clause as a tax on the U.S. government and that the Comptroller violated the constitutional requirements of equal protection and equal taxation by denying the refund claim. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***Northwestern Resources Co. v. Strayhorn, et al.*** Cause #GN500768  
AG Case #052118247

Sales Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 03/11/05	Plaintiff's Counsel:	Mark W. Eidman
Period: 10/01/97- 03/31/01		Ray Langenberg
Amount: \$825,300.33		Scott, Douglass & McConnico, LLP Austin

Issue: Whether parts, consumables and repair services that Plaintiff purchased for draglines used in its coal mining operations are exempt from sales tax under the manufacturing exemption. Plaintiff claims that the use of a dragline is to remove overburden, which results in a physical change. Plaintiff also claims violation of equal and uniform taxation, equal rights clause, equal protection clause, due course of law and due process clause.

Status: Answer filed.

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***Petrolite Corp. v. Sharp, et al.*** Cause #91-13885  
AG Case #91149840

Sales Tax; Protest Filed: 09/27/91 Period: 04/01/84 - 03/31/88 Amount: \$432,105	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Resale certificates; taxable maintenance services; taxability of various chemicals and other tangible personal property used in oil well services.

Status: Inactive.

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***R.H. Salas & Associates, Inc. v. Comptroller*** Cause #GN403975  
AG Case #042071365

Sales Tax; Protest & Declaratory Judgment Filed: 12/06/04 Period: 08/01/98- 04/30/02 Amount: \$66,543.64	Asst. AAG Assigned:  Plaintiff's Counsel:	Jeff Mullins  Diego A. Lopez The Law Offices of Diego A. Lopez San Antonio
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Issue: Whether Plaintiff owes sales tax on purchased equipment used in the manufacturing of wood and metal products. Whether Plaintiff owes sales tax on electricity used to operate the equipment. Whether Plaintiff was denied due process of law and the right to equal protection of the law. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Answer filed.

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***Raytheon E-Systems, Inc. v. Rylander, et al.*** Cause #GN101511  
#03-02-00346-CV  
#03-0416  
AG Case #011451606

Sales Tax; Refund & Declaratory Judgment Filed: 05/17/01 Period: 06/01/89 - 12/31/96 Amount: \$6,000,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Curtis J. Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff also seeks attorneys' fees.

Status: Summary Judgment hearing held 03/05/02. Partial summary judgment for plaintiff signed 03/29/02. Judgment for Raytheon granted 05/15/02. State's Notice of Appeal filed 06/04/02. Appellants' brief filed 09/20/02. Appellee's brief filed 10/18/02. Appellants' reply brief filed 11/07/02. Oral argument completed 12/04/02. Comptroller's post-submission brief filed 12/15/02. Trial court affirmed, in part, remanded, in part, 01/30/03. Motion for Rehearing and Motion for En Banc Reconsideration filed by State 03/17/03; denied 03/27/03. Petition for Review filed by State 05/12/03. Response filed 05/20/03 by Raytheon. Reply filed by State 05/30/03. Petition for Review denied 08/28/03. Motion for Rehearing filed by State 09/12/03; denied 10/24/03. Final order of the Supreme Court sent to Court of Appeals 12/09/03. Case is in discovery on remand. State's Motion for Summary Judgment granted 06/03/04. Raytheon's Motion for Summary Judgment denied 06/08/04. Order ruling that case is not final setting deadline for status report signed 06/28/04. State's Report filed 07/16/04. Judgment hearing on 10/04/04 passed to consider settlement.

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***Raytheon Co., as Successor in Interest to Raytheon Training, Inc. v. Rylander, et al.*** Cause #GN201022  
AG Case #021588694

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 03/28/02	Plaintiff's Counsel:	Mark W. Eidman
Period: 08/01/88 - 05/31/97		Scott, Douglass & McConnico
Amount: \$2,500,000.00		Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***Raytheon Co. and Daimlerchrysler Corp. as Successors to Central Texas Airborne Systems, Inc., fka Chrysler Technologies Airborne Systems, Inc. v. Strayhorn, et al.*** Cause #GN302082  
AG Case #031816143



Sales Tax; Refund  
Filed: 06/13/03  
Period: 04/01/89-  
12/31/96  
Amount: \$228,368

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Jim Cloudt  
  
Mark W. Eidman  
Ray Langenberg  
Doug Sigel  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***Raytheon Co., as Successor to Raytheon TI Systems, Inc. v. Strayhorn, et al.***  
Cause #GN303643  
AG Case #031853625

Sales Tax; Refund  
Filed: 09/09/03  
Period: 07/01/97-  
12/31/98  
Amount: \$3,500,000

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Jim Cloudt  
  
Mark W. Eidman  
Ray Langenberg  
Doug Sigel  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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***Raytheon Co. v. Strayhorn, et al.*** Cause #GN303644  
AG Case #031853633

Sales Tax; Refund  
Filed: 09/09/03  
Period: 01/01/99-  
12/31/02  
Amount: \$7,400,000

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Jim Cloudt  
  
Mark W. Eidman  
Ray Langenberg  
Doug Sigel  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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***Raytheon Co., as Successor to Raytheon E-Systems, Inc. v. Strayhorn, et al.***

Cause #GN303645

AG Case #031853641

Sales Tax; Refund

Filed: 09/09/03

Period: 01/01/97-  
12/31/98

Amount: \$4,000,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman  
Ray Langenberg  
Doug Sigel  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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***Raytheon Co., as Successor to Raytheon E-Systems, Inc. v. Strayhorn, et al.***

Cause #GN304089

AG Case #031873441

Sales Tax; Protest &  
Declaratory Judgment

Filed: 10/16/03

Period: 10/01/91-  
12/31/96

Amount: \$389,408.28

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman  
Ray Langenberg  
Doug Sigel  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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**Reynolds Metals Co. v. Strayhorn, et al.** Cause #GN401468  
AG Case #041970799

Sales Tax; Refund Filed: 05/07/04 Period: 03/01/94- 12/31/00 Amount: \$828,614.08	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether conveyors and weigh-ometers are exempt as manufacturing equipment or taxable as intraplant transportation. Whether repair and replacement parts for the conveyors are exempt from sales tax as purchases of pollution control equipment used in manufacturing and purchases of environmental repairs. Whether ship unloaders qualify as rolling stock and exempt from sales tax. Plaintiff also claims violation of equal and uniform taxation and equal protection.

Status: Answer filed.

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**Roadway Express, Inc. v. Rylander, et al.** Cause #GN002831  
AG Case #001357631

Sales Tax; Protest & Declaratory Judgment Filed: 09/25/00 Period: 04/01/88- 05/31/92 Amount: \$713,686.05 \$206,053.87	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David Cowling Robert Lochridge Jones Day Dallas
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Issue: Whether various equipment used by the Plaintiff with its trucks is exempt from use tax as tangible personal property sold to a common carrier for use outside the state. Alternatively, whether the equipment had been taxed as vehicle components under the interstate motor carrier tax and could not be taxed as "accessories." Alternatively, whether taxing 100% of the value of the equipment violates the Commerce Clause because of a lack of substantial nexus and of fair apportionment. Whether all tax was paid on Plaintiff's repair and remodeling contracts and capital assets. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Trial setting passed. Discovery in progress.

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***Robbins & Myers, Inc. v. Strayhorn, et al.*** Cause #GN301171  
AG Case #031786551

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jeff Mullins
Filed: 04/11/03	Plaintiff's Counsel:	Henry Binder
Period: 06/01/95- 07/31/98		Porter & Hedges Houston
Amount: \$23,492.41		

Issue: Whether Plaintiff is required to pay additional tax after the Comptroller's administrative order became final. Whether Plaintiff is entitled to the manufacturing exemption for down-hole drilling equipment and whether completion of Plaintiff's facility was new construction

Status: Answer filed. Inactive.

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***Rockwell Collins, Inc. v. Rylander, et al.*** Cause #GN203339  
AG Case #021676788

Sales Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 09/13/02	Plaintiff's Counsel:	David H. Gilliland
Period: 01/01/97- 12/31/98		Clark, Thomas & Winters Austin
Amount: \$591,028.39		

Issue: Plaintiff claims a sale for resale exemption on items resold to the federal government. Plaintiff also claims a denial of equal protection and an exemption under §151.3111.

Status: Answer filed.

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***Rollins & Rollins Enterprises, Inc. , dba Country Kwik Stop v. Rylander, et al.***  
Cause #GN202097  
AG Case #021640651

Sales Tax; Protest	Asst. AAG Assigned:	Natalie McLemore
Filed: 06/28/02	Plaintiff's Counsel:	William T. Peckham
Period: 08/01/97- 07/31/00		Austin
Amount: \$45,059.74		

Issue: Whether Plaintiff is liable for tax on food sold from its convenience store area.  
Whether the Comptroller applied proper percentages for loss and waste.

Status: Answer filed.

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**SC Kiosks, Inc. v. Strayhorn, et al.** Cause #GN500795  
AG Case #052126810

Sales Tax; Protest Filed: 03/15/05 Period: November 2004 Filing Period December 2004 Filing Period January 2005 Filing Period Amount: \$146,909.55 \$66,251.85 \$59,268.75	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Curtis J. Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether telephones purchased by Plaintiff, and subsequently sold to customers who contract for telephone service with a carrier associated with the Plaintiff, are exempt from sales tax under the sale for resale exemption.

Status: Answer filed.

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**Sabine Mining Co., The v. Strayhorn, et al.** Cause #GN401382  
AG Case #041964867

Sales Tax; Refund Filed: 04/30/04 Period: 10/01/97- 09/30/01 Amount: \$905,468.12	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether replacement parts and repair services for draglines qualify as manufacturing equipment and exempt from sales tax. Plaintiff claims that the draglines directly make or cause a chemical or physical change to formations, falling within the exempt manufacturing process. Plaintiff also claims violation of equal and uniform taxation, equal rights, equal protection, due course of law and due process.

Status: Answer filed.

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***San Antonio Spurs, L.L.C. v. Strayhorn, et al.*** Cause #GN403429  
AG Case #042050401

Sales Tax; Protest Filed: 10/15/04 Period: 06/01/97- 06/30/00 Amount: \$913,435.03	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark W. Eidman Curtis Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether suite rental fees are exempt from sales tax as non-taxable rentals or licenses for the use of real property.

Status: Answer filed.

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***Schoenborn & Doll Enterprises, Inc. v. Rylander, et al.*** Cause #99-07605  
AG Case #991187592

Sales Tax; Protest & Declaratory Judgment Filed: 07/01/99 Period: 07/01/95- 05/31/97 Amount: \$140,936.92	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Kevin W. Morse Blazier, Christensen & Bigelow Austin
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Issue: Whether the portion of Plaintiff's gym membership fee allocated to aerobic training is included in Plaintiff's taxable amusement services. Whether the Comptroller improperly disregarded the rule addressing non-taxable aerobic and tanning services under the amusement services tax. Whether the Comptroller should have applied its detrimental reliance policy.

Status: Inactive. Plaintiff paid tax under pay-out agreement.

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***Service Merchandise Co., Inc. v. Sharp, et al.*** Cause #98-11572  
AG Case #981063308

Sales Tax; Protest Filed: 10/13/98 Period: 01/01/92- 12/31/93 Amount: \$413,569	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones Day Dallas
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Issue: Whether the purchase of sales catalogs printed out-of-state and shipped to Plaintiff's customers in Texas (at no charge to the customer) incur sales tax.

Status: On hold. Plaintiff filed bankruptcy in Tennessee on 03/25/99. Motion to dismiss set 05/07/01. Plaintiff filed motion to retain 04/25/01; granted 08/14/01. Motion to dismiss set 07/25/02; granted 01/16/03.

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***Sharper Image Corp. v. Rylander, et al.*** Cause #GN203645  
AG Case #021686779

Sales Tax; Protest & Declaratory Judgment Filed: 10/09/02 Period: 07/01/94- 11/30/97 Amount: \$264,355.46	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Gilbert J. Bernal, Jr. Stahl, Bernal & Davies Austin  Martin I. Eisenstein Kevin J. Beal Brann & Isaacson Lewiston, ME
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Issue: Whether use tax imposed on catalogs shipped from out-of-state is unlawful because: (1) plaintiff never used the catalogs in Texas; (2) the tax violates the Commerce Clause; and, (3) Rule 3.346 is unconstitutional. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Discovery in progress. Trial to be reset.

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**Sharper Image Corp. v. Rylander, et al.** Cause #GN203821  
AG Case #021696851

Sales Tax; Protest &  
Declaratory Judgment  
Filed: 10/22/02  
Period: 12/01/97-  
03/31/01  
Amount: \$258,205.20

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Gilbert J. Bernal, Jr.  
Stahl, Bernal & Davies  
Austin

Martin I. Eisenstein  
Kevin J. Beal  
Brann & Isaacson  
Lewiston, ME

Issue: Whether use tax imposed on catalogs shipped from out-of-state is unlawful because:  
(1) plaintiff never used the catalogs in Texas; (2) the tax violates the Commerce Clause; and,  
(3) Rule 3.346 is unconstitutional. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Discovery in progress. Trial to be reset.

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**Southern Sandblasting and Coatings, Inc. v. Rylander, et al.** Cause #GN103910  
AG Case #011532355

Sales Tax; Protest &  
Declaratory Judgment  
Filed: 11/27/01  
Period: 01/01/95-  
12/31/98  
Amount: \$219,219.35  
\$47.15

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Gilbert J. Bernal, Jr.  
Stahl, Bernal & Davies  
Austin

Issue: Whether items used in vessel repair, such as paint-gun parts, are exempt materials.  
Whether denial of the exemption violates equal protection. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress. Trial set 08/08/05.

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***Southwest Food Processing & Refrigerated Services, aka Southwest Refrigerated Warehousing Services v. Rylander, et al.*** Cause #GN103390  
AG Case #011509668

Sales Tax; Protest Filed: 10/15/01 Period: 01/01/96- 12/31/99 Amount: \$188,477.57	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  H. Christopher Mott Krafsur Gordon Mott El Paso
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Issue: Whether plaintiff owes tax on electricity used to freeze food items.

Status: Inactive.

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***Southwestern Bell Telephone, L.P. v. Strayhorn, et al.*** Cause #GN402300  
AG Case #041998360

Sales Tax; Refund Filed: 07/22/04 Period: 06/01/05- 12/31/98 Amount: \$291,516,385.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Curtis J. Osterloh Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether equipment used to process tangible personal property for ultimate sale is exempt from sales tax under the manufacturing and processing exemption. Whether payphones purchased by Plaintiff to perform taxable telecommunications services qualify for the sale for resale exemption. Whether electricity purchased and resold as an integral part of other tangible personal property and used to perform taxable telecommunications services is exempt from sales tax. Whether stand-alone installation labor provided directly to a customer by a vendor or by a third-party installer is taxable.

Status: Answer filed.

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***Sprint International Communications, Inc. v. Sharp, et al.*** Cause #96-14298  
AG Case #96637296

Sales Tax; Refund Filed: 11/22/96 Period: 02/01/86- 01/31/90 Amount: \$1,269,474	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Curtis J. Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether networking services are taxable as telecommunications services.

Status: Case was set to be Dismissed for Want of Prosecution in March, 2003. Motion to Retain was filed.

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***Steamatic of Austin, Inc., et al. v. Rylander, et al.*** Cause #GN200631  
AG Case #021567771

Sales Tax; Refund Filed: 02/25/02 Period: 04/01/91- 04/30/94 Amount: \$103,335.27	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether plaintiff is entitled to a tax refund for repairs to tangible personal property on the grounds that such repairs were for casualty losses exempt under the Comptroller's Rule 3.357 and 3.310. Whether the claim is barred by limitations. Whether the Comptroller improperly changed the rule on casualty losses.

Status: Motion for Summary Judgment filed. Response filed. Partial Summary Judgment on limitations granted for Plaintiff 04/07/04.

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**Summit Photographix, Inc. v. Rylander, et al.** Cause #GN001808  
AG Case #001323633

Sales Tax; Declaratory  
Judgment

Filed: 06/23/00  
Period: 01/01/94-  
12/31/96

Amount: \$6,532,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Mark D. Hopkins  
Fields & Hopkins  
Austin

Hilary Thomas  
Kondos & Kondos Law  
Offices  
Richardson

Issue: Whether Plaintiff is a direct sales company and may be regarded as a retailer for sales made by independent retailers of business start-up kits. Whether the Comptroller's rule defining direct sales organizations violates due process. Whether §151.024 was applied retroactively. Whether the items at issue are not taxable tangible personal property. Whether the Comptroller erred in basing the assessment on the suggested retail price of all issued items. Whether penalty and interest should be waived. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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**Sysco Food Services of Austin, Inc. v. Strayhorn, et al.** Cause #GN400465  
AG Case #041925850

Sales Tax; Protest  
Filed: 02/17/04

Period: 05/01/98-  
04/30/01

Amount: \$92,357.48

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Mark W. Eidman  
Curtis Osterloh  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether electricity used to lower the temperature of food products is exempt as electricity used in processing.

Status: Discovery in progress.

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**Sysco Food Services of Houston, L.P. (fka Sysco Food Service of Houston, Inc.) v. Rylander, et al.** Cause #GN100633  
AG Case #011420734

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 03/01/01	Plaintiff's Counsel:	Judy M. Cunningham
Period: 01/01/94-12/31/96		Attorney at Law
Amount: \$196,492.74		Austin

Issue: Whether electricity used to lower the temperature of food products is exempt as electricity used in processing. Whether equipment is exempt for the same reason.

Status: Set for DWOP.

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**Sysco Food Services of Houston, L.P. (fka Sysco Food Services of Houston, Inc.) v. Strayhorn, et al.** Cause #GN302075  
AG Case #031816119

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 06/13/03	Plaintiff's Counsel:	Judy M. Cunningham
Period: 07/01/94-06/30/98		Attorney at Law
Amount: \$270,401.80		Austin

Issue: Whether electricity used to lower the temperature of food products is exempt as electricity used in processing. Whether equipment is exempt for the same reason.

Status: Discovery in progress.

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**TCCT Real Estate, Inc. v. Rylander, et al.** Cause #99-11647  
AG Case #991219239

Sales Tax; Protest Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 10/06/99	Plaintiff's Counsel:	David Cowling
Period: 10/01/91-03/31/93		Robert Lochridge
Amount: \$146,484.05		Jones Day
		Dallas

Issue: Whether Plaintiff sold electricity for commercial use when it obtained electrical service under a management agreement for another company which used the electricity in manufacturing or processing. Whether the exemption for electricity used in manufacturing requires the purchaser of electricity to be the user. Whether Plaintiff can be held as a seller of electricity in violation of the TPURA. Whether Plaintiff's right to equal and uniform taxation has been violated. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress. Case to be settled.

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***TCCT Real Estate, Inc. as Successor to TCC Austin Industrial Overhead v. Rylander, et al.*** Cause #99-11648  
AG Case #991219221

Sales Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Declaratory Judgment		
Filed: 10/05/99	Plaintiff's Counsel:	David Cowling
Period: 07/01/89-		Robert Lochridge
12/31/91		Jones Day
Amount: \$479,719.44		Dallas

Issue: Whether Plaintiff sold electricity for commercial use when it obtained electrical service under a management agreement for another company which used the electricity in manufacturing or processing. Whether the exemption for electricity used in manufacturing requires the purchaser of electricity to be the user. Whether Plaintiff can be held as a seller of electricity in violation of the TPURA. Whether Plaintiff's right to equal and uniform taxation has been violated. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress. Case to be settled.

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***TDI-Halter, Inc. v. Rylander, et al.*** Cause #GN100339  
AG Case #011409653

Sales Tax; Refund	Asst. AAG Assigned:	Blake Hawthorne
Filed: 02/01/01		
Period: 01/01/93-	Plaintiff's Counsel:	Mark W. Eidman
06/30/96		Ray Langenberg
Amount: \$475,000		Eric Hagenswold
		Scott, Douglass &
		McConnico
		Austin

Issue: Whether conversion of drilling rigs to self-propelled, deep water rigs is manufacturing under the statute and Comptroller rules. Whether dredging is non-taxable maintenance of real property. Alternatively, whether interest should be waived.

Status: DWOP notice sent by court 03/29/05.

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***Telecable Associates, Inc.; Teleservice Corp. of America; Texas Telecable, Inc.; TCA Cable of Amarillo, Inc.; and Texas Community Antennas, Inc. v. Rylander, et al.*** Cause #GN100705  
AG Case #011422482

Sales Tax; Refund Filed: 03/07/01 Period: 03/01/93- 12/31/96 Amount: \$400,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether cable equipment on the customer's premises qualifies for the sale for resale exemption for property used to provide a taxable service.

Status: Discovery in progress. Set 04/15/05 for dismissal for want of prosecution.

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***Texaco, Inc. v. Rylander, et al.*** Cause #GN201543  
AG Case #021613625

Sales Tax; Refund Filed: 05/10/02 Period: 05/01/87- 12/31/90 Amount: \$157,090.20	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Plaintiff claims that interest should be offset or waived for a period before a refund was made to a subsidiary.

Status: Answer filed.

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***Texas Gulf, Inc. v. Bullock, et al.*** Cause #485,228  
AG Case #90311185

Sales Tax; Refund Filed: 06/05/90 Period: 01/01/85 - 06/30/88 Amount: \$294,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jeff Mullins  Ira A. Lipstet Jenkins & Gilchrist Austin
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Issue: Are pipes exempt as manufacturing equipment or taxable as intra plant transportation.

Status: Inactive.

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***Union Carbide Corp. v. Rylander, et al.*** Cause #GN000580  
AG Case #001261452

Sales Tax; Protest Filed: 01/13/00 Period: 01/01/89- 12/31/92 Amount: \$575,857.40	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Curtis Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff is entitled to an exemption on labor charges for installing floating roofs on tanks at its chemical plant because: (1) the roofs are exempt pollution control equipment, (2) the labor was for non-taxable new construction, or (3) the labor was for remodeling of tangible personal property.

Status: Settlement negotiations pending.

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***United Space Alliance, LLC v. Strayhorn, et al.*** Cause #GN401174  
AG Case #041954488

Sales Tax; Refund Filed: 04/14/04 Period: 07/01/99- 07/31/03 Amount: \$975,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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***Val-Pak Franchise Operations, Inc. dba Valpak of Houston v. Strayhorn, et al.***

Cause #GN300267

AG Case #031746142

Sales Tax; Protest

Filed: 01/28/03

Period: 04/01/95-  
12/31/98

Amount: \$734,112.10

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

James A. Hemphill  
Graves, Dougherty,  
Hearon & Moody  
Austin

Issue: Whether Plaintiff sells non-taxable advertising services. Whether Plaintiff purchases non-taxable proprietary information services. Whether marketing fees are non-taxable membership dues.

Status: Settled.

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***West Texas Pizza, Limited Partnership v. Sharp, et al.*** Cause #96-11751

AG Case #96611633

Sales Tax; Protest

Filed: 09/27/96

Period: 06/01/88-  
06/30/92

Amount: \$35,247

Asst. AAG Assigned:

Plaintiff's Counsel:

Natalie McLemore

Richard L. Rothfelder  
Milissa M. Magee  
Kirkendall, Isgur &  
Rothfelder  
Houston

Issue: Whether prizes obtained by collecting tickets from amusement machines in a restaurant are "purchased" by the customer as part of the price of the food.

Status: Inactive.

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**White Swan, Inc. v. Strayhorn, et al.** Cause #GN304767  
AG Case #041904608

Sales Tax; Refund Filed: 12/18/03 Period: 10/01/93- 12/31/97 Amount: \$415,185.61	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Judy M. Cunningham Attorney at Law Austin
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Issue: Whether the purchase of electricity used to lower the temperature of food products is exempt under Tax Code Sections 151.317 and 151.318. Whether the process causes a physical change to the products. Whether the decision of the Comptroller violated the statute and long-standing Comptroller policy.

Status: Discovery in progress.

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**Williams, Duane Everett v. Comptroller** Cause #GN304667  
AG Case #031899222

Sales Tax; Refund & Declaratory Judgment Filed: 12/10/03 Period: 2002 Amount: \$50,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Michael R. Cooper Salado
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Issue: Whether Plaintiff's civil rights were violated by the Comptroller's audit and whether the audit assessment should be set aside for lack of substantial evidence.

Status: Answer filed.

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**World Fitness Centers, Inc. v. Rylander, et al.** Cause #GN201795  
AG Case #021626239

Sales Tax; Refund Filed: 05/30/02 Period: 09/01/94- 05/31/98 Amount: \$273,005.56	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Ray Bonilla Ray, Wood & Bonilla Austin
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Issue: Whether plaintiff owes sales tax on the discount and reserve amounts of its factored contracts when plaintiff is a cash-basis taxpayer.

Status: Answer filed.

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**Zale Delaware, Inc. v. Rylander, et al.** Cause #GN202030  
AG Case #021640669

Sales Tax; Refund Filed: 06/24/02 Period: 08/01/92- 02/28/97 Amount: \$\$333,602.57	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff is liable for tax on items temporarily stored in Texas. Whether tax on services purchased by Plaintiff should be reduced to reflect the out-of-state benefit of those services. Whether Plaintiff should get a refund or credit for tax paid on inventory. Whether the Comptroller should be barred from off-setting debts in the period between the filing of Plaintiff's bankruptcy petition and the confirmation of its reorganization plan.

Status: Answer filed.

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**Zale Delaware, Inc. v. Strayhorn, et al.** Cause #GN301725  
AG Case #031806045

Sales Tax; Refund & Declaratory Judgment Filed: 05/27/03 Period: 08/01/92- 02/28/97 Amount: \$1,170,404.64	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff is entitled to exemption on items of inventory temporarily stored in-state. Whether tax was improperly assessed on services performed outside the state. Whether installation services on counters and software were readily separable from taxable tangible property. Whether the Comptroller should be enjoined from taking offsets pursuant to Plaintiff's bankruptcy plea.

Status: Answer filed.

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**Zimmerman Sign Co. v. Strayhorn, et al.** Cause #GN500612  
AG Case #052113065

Sales Tax; Refund

Filed: 02/28/05

Period: 01/01/95-  
04/30/98

Amount: \$105,046.66

Asst. AAG Assigned:

Plaintiff's Counsel:

Natalie McLemore

Mark W. Eidman  
Ray Langenberg  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether certain equipment, machinery, parts, supplies and consumables purchased to manufacture exterior signs are exempt from sales tax under the manufacturing exemption. Whether or not Plaintiff is a "contractor" to qualify for the manufacturing exemption.

Status: Answer filed.

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## Insurance Tax

***Allstate County Mutual Insurance Co.; Allstate Insurance Co.; Allstate Indemnity Co.; Allstate Texas Lloyds; and Allstate Property and Casualty Insurance Co. v. Strayhorn, et al.*** Cause #GN300968  
AG Case #031778947

Insurance Premium Tax; Protest & Declaratory Judgment Filed: 03/26/03 Period: 1995-1998 Amount: \$174,386.15 \$10,529.48 \$4,013.24 \$11,858.40 \$7,306.09 (Total: \$208,093.27)	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Steven D. Moore Fred B. Werkenthin Jackson & Walker Austin
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Issue: Whether Plaintiffs owe gross premiums tax on defaulted auto insurance premiums that are not received.

Status: Answer filed.

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***American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al.*** Cause #396,975  
AG Case #861483X

Gross Premium Tax; Protest & Declaratory Judgment Filed: 05/08/86 Period: 1985-1988 Amount: \$1,745,569.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Fred B. Werkenthin Steve Moore Jackson & Walker Austin
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Issue: Whether Tex. Ins. Code art. 4.10 unconstitutionally discriminates against foreign property and casualty companies by basing the premium tax rate on their percentage of Texas investments (equal protection). (Pleadings refer to art. 4.10, but protest letters refer to arts. 4.11 and 21.46.) Also seeks recovery and attorneys' fees pursuant to 42 U.S.C. §1983.

Status: Inactive. To be dismissed.

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**American Fidelity Assurance Co. v. Strayhorn, et al.** Cause #GN302070  
AG Case #031816564

Insurance Premium Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 06/12/03	Plaintiff's Counsel:	Michael W. Jones
Period: 1992		Kevin F. Lee
Amount: \$241,625.20		Thompson, Coe, Cousins & Irons Austin

Issue: Whether investments in “Fannie Mae” and “Freddie Mac” mortgage pools qualify as investments in Texas mortgages. Whether Rule 3.809 (c) is invalid.

Status: Answer filed.

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**American International Specialty Lines Insurance Co. v. Rylander, et al.** Cause #GN002666 (Consolidated with *Lexington Insurance Co. and Landmark Insurance Co. v. Rylander, et al.*, Cause #GN100569)  
AG Case #001351998

Insurance Premium Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 09/08/00	Plaintiff's Counsel:	Cynthia Hollingsworth
Period: 1995		Curtis L. Frisbie, Jr.
Amount: \$362,975.97		Randy D. Gordon
		Samuel E. Joyner
		Gardere Wynne & Sewell Dallas

Issue: Whether an authorized surplus lines insurer is required to pay unauthorized insurance tax when the Comptroller is unable to verify payment of tax by the agent. Whether the Comptroller wrongfully relied on another hearings decision as precedent. Plaintiff also seeks injunctive and declaratory relief and attorneys' fees.

Status: See *Lexington Insurance Co. and Landmark Insurance Co. v. Rylander, et al.*, Cause #GN100569.

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***Fireman's Fund Insurance Co. of Ohio v. Rylander, et al.*** Cause #GN101899  
AG Case #011464476

Insurance Premium Tax; Protest & Declaratory Judgment Filed: 06/20/01 Period: 1992-1998 Amount: \$439,074.12	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Stephen L. Phillips Brian C. Newby Julie K. Lane Cantey & Hanger, Roan & Autry Austin
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Issue: Whether Plaintiff, an authorized surplus lines insurer, is liable for unauthorized insurance premiums tax. Whether the Comptroller lacks authority to determine that Plaintiff is an unauthorized insurer, and whether the Texas Department of Insurance is required to make that determination. Whether the Comptroller engaged in selective and improper enforcement. Whether the assessment violates Due Process and the McCarran-Ferguson Act. Alternatively, whether penalty should be waived. Plaintiff also seeks injunctive relief and attorneys' fees.

Status: Answer filed.

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***First American Title Insurance Co. v. Strayhorn, et al.*** Cause #GN301692  
#03-04-00342-CV  
AG Case #031806011

Retaliatory Tax; Protest & Declaratory Judgment Filed: 05/23/03 Period: 1998 through 2002 Amount: \$1,432,580.76	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin  Matthew J. Zim Steptoe & Johnson, LLP Washington, D.C.
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Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA. Plaintiff also seeks attorneys’ fees.

Status: The State’s motion for summary judgment was granted 05/18/04 and Plaintiff’s was denied. Notice of Appeal filed 06/17/04. Clerk’s Record filed 07/06/04. Supplement Clerk’s Records filed 07/22/04 and 07/29/04. Motion to Consolidate cases granted 07/29/04 (*Old Republic National Title Insurance Co. v. Strayhorn, et al.*, Cause #GN401630). Appellants’ brief filed 08/30/04. Appellees’ brief filed 10/26/04. Reply brief filed by Appellant 11/15/04. Submitted on Oral Argument 01/19/05. Appellees’ Supplemental Brief filed 02/01/05. Appellants’ Supplemental Brief filed 02/15/05.

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***First American Title Insurance Co. v. Strayhorn, et al.*** Cause #GN401631  
AG Case #041976440

Retaliatory Tax; Protest Filed: 05/21/04 Period: 2003 Amount: \$1,490,029.00	Asst. AAG Assigned:  Plaintiff’s Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA.

Status: Answer filed.

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***Lexington Insurance Co., Landmark Insurance Co. v. Rylander, et al.*** Cause  
#GN100569  
#03-03-00169-CV  
#04-0429  
AG Case #011417896

Insurance Premium Tax; Protest & Declaratory Judgment Filed: 02/22/01 Period: 1992-1995 Amount: \$1,596,196.63 \$36,174.92	Asst. AAG Assigned:  Plaintiff’s Counsel:	Gene Storie  Curtis L. Frisbie, Jr. Cynthia C. Hollingsworth Jeremy Martin Gardere Wynne Sewell LLP Dallas
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Issue: Whether an authorized surplus lines insurer is required to pay unauthorized insurance tax when the Comptroller is unable to verify payment of tax by the agent. Whether the Comptroller wrongfully relied on another hearings decision as precedent. Plaintiff also seeks injunctive and declaratory relief and attorneys' fees.

Status: Summary Judgment motions held 08/01/02; Summary Judgment granted for insurers. Notice of Appeal filed 03/21/03. Appellants' brief filed 08/15/03. Appellee's brief filed 11/10/03. Appellants' reply brief filed 12/05/03. Oral argument held 01/07/04. Third Court of Appeals reversed and remanded trial court's judgment 02/20/04. Appellees filed Motion for Consideration En Banc and Motion for Rehearing 03/08/04; overruled 03/25/04. Petition for Review filed 06/24/04. Waiver of Response filed 07/06/04. Case forwarded to Court 07/13/04. Response to Petition for Review filed by Respondent 08/26/04. Petitioner's Reply filed 09/17/04. Court requested briefs on the merits. Petitioners' brief on the merits filed 11/18/04. Respondents' brief on the merits filed 01/07/05. Amicus Curiae posted 01/18/05. Petitioner's reply brief on the merits filed 01/27/05. Court requested a reply from Respondents. Respondents' reply brief filed 03/17/05. Lexington filed a motion to strike and/or seal the Amicus Brief of Varco Int'l.

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***Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.*** Cause #484,745  
AG Case #90304512

Gross Premium Tax; Protest Filed: 05/24/90 Period: 1985-1986 1989-1992 Amount: \$1,848,606	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Fred B. Werkenthin Steve Moore Breck Harrison Jackson & Walker Austin
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Issue: Whether insurance taxes are owed by insurance companies on dividends applied to paid-up additions and renewal premiums.

Status: 9th Amended Petition filed. Settlement discussed, and partial settlement agreed to. Final judgment signed on paid-up additions issue. Renewal premium issue severed and retained on docket. Plaintiffs have made settlement offer on remainder of case.

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**Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.** Cause #484,796  
AG Case #90304503

Maintenance Tax; Protest Filed: 05-23-90 Period: 1989-1991 Amount: \$1,616,497	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Fred B. Werkenthin Jackson & Walker Austin
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Issue: Whether Tex. Ins. Code art. 21.07-6 is preempted by ERISA.

Status: One Plaintiff has submitted documentation supporting a refund. Case will be concluded in accordance with *NGS v. Barnes*, 998 F.2d 296 (5th Cir. 1993). Severance and final judgment entered for Metropolitan. Awaiting documentation for other Plaintiffs.

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**Old Republic National Title Insurance Co. v. Strayhorn, et al.** Cause #GN401630  
AG Case #041976416

Retaliatory Tax; Refund Filed: 05/21/04 Period: 2003 Amount: \$289,403.85	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA. Plaintiff also seeks attorneys’ fees.

Status: Answer filed.

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**Old Republic Title Insurance Co. v. Strayhorn, et al.** Cause #GN301693  
#03-04-003472-CV  
(Consolidated with *First American Title Insurance Co. v. Strayhorn, et al.*, Cause #GN301692, #03-04-00342-CV)  
AG Case #031806029

Retaliatory Tax; Protest & Declaratory Judgment Filed: 05/23/03 Period: 2002 Amount: \$219,626.40	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA. Plaintiff also seeks attorneys’ fees.

Status: The State’s motion for summary judgment was granted 05/17/04 and Plaintiff’s was denied. Notice of Appeal filed 06/17/04; dismissed 07/29/04 due to Motion for Consolidation. See *First American Title Insurance Co. v. Strayhorn, et al.*, Cause #GN301692, #03-04-00342-CV.

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**STP Nuclear Operating Co. v. Strayhorn, et al.** Cause #GN301053  
AG Case #031808371

Insurance Premium Tax; Protest Filed: 06/11/03 Period: 2002 Amount: \$115,287.80	Asst. AAG Assigned:  Plaintiff’s Counsel:	Gene Storie  Howard P. Newton Rene D. Ruiz Cox Smith Matthews Inc. San Antonio
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Issue: Whether the independently procured insurance tax may be collected from a Texas corporation despite the decisions in *Todd Shipyards* and *Dow Chemical*. Whether imposition of the tax violates equal protection or is pre-empted by federal law governing the operation of nuclear plants.

Status: Waiting for administrative decision on refund claim for other periods.

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**St. Paul Surplus Lines Co. v. Rylander, et al.** Cause #GN102788  
AG Case #011490877

Insurance Premium Tax; Protest & Declaratory Judgment Filed: 08/24/01 Period: 01/01/95- 12/31/98 Amount: \$163,021.27	Asst. AAG Assigned:  Plaintiff’s Counsel:	Gene Storie  Michael W. Jones Kevin F. Lee Thompson, Coe, Cousins & Irons Austin  Richard S. Geiger Thompson, Coe, Cousins & Irons Dallas
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Issue: Whether Plaintiff, an eligible surplus lines insurer, is liable for unauthorized insurance tax. Plaintiff also seeks declaratory relief and attorney's fees.

Status: To be determined by *Lexington Insurance Co., Landmark Insurance Co., et al. v. Strayhorn, et al.*

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***Universe Life Insurance Co. v. State of Texas*** Cause #97-05106

#03-98-00110-CV

AG Case #97727302

Insurance Tax; Protest Filed: 04/29/97 Period: 1993 Amount: \$56,958	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Larry Parks Long, Burner, Parks & Sealey Austin
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Issue: Whether plaintiff should be given credit against tax due for examination fees paid to the state in connection with a market conduct examination report ordered by the Texas Department of Insurance. Plaintiff also asks for penalty and interest waiver.

Status: Cross-motions for summary judgment heard 11/12/97. Summary judgment granted for Plaintiff. State appealed. Case submitted without oral argument 07/06/98. Affirmed in part, reversed and remanded in part 03/11/99. State's motion for rehearing denied. Petition for Review filed 06/01/99. Briefs on merits requested by Court. State's brief filed 10/18/99. Petition denied. Case remanded to trial court. To be consolidated with Cause #GN002605, *The Universe Life Insurance Co. v. Strayhorn, et al.* Case settled.

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***Universe Life Insurance Co., The v. Cornyn, et al.*** Cause #GN002605

AG Case #001348580

Insurance Premium Tax; Refund Filed: 09/01/00 Period: 1993 1994 Amount: \$87,288.51 \$426,620.38	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Larry Parks Long, Burner, Parks, McClellan & Delargy Austin
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Issue: Whether plaintiff should be given credit against tax due for examination fees paid to the state in connection with a market conduct examination report ordered by the Texas Department of Insurance. Plaintiff also asks for penalty and interest waiver.

Status: Comptroller to make partial refund awarded in administrative hearing. Court issued a dismissal notice. Plaintiff filed Motion to Retain. Trial was set 01/18/05. Plaintiff made a settlement offer. Case settled.

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***Warranty Underwriters Insurance Co. v. Rylander, et al.*** Cause #99-12271  
AG Case #991226739

Insurance Tax; Protest &  
Declaratory Judgment

Filed: 10/20/99

Period: 1993-1997

1993-1997

Amount: \$416,462.73

\$214,893.74

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Raymond E. White

Daniel Micciche

Akin, Gump, Strauss,

Hauer & Feld

Austin

Issue: Whether the Comptroller improperly included amounts not received by Plaintiff in Plaintiff's gross premiums tax base. Whether any maintenance tax is payable on Plaintiff's business of home warranty insurance. Whether the Comptroller is bound by the prior actions and determinations of the Texas Department of Insurance. Whether the assessments of tax violate due process and equal taxation. Whether penalty and interest should have been waived.

Status: Discovery in progress.

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## Other Taxes

***Alpine ISD v. Strayhorn*** Cause #GV402237  
AG Case #041999202

Property Tax; Administrative Appeal Filed: 07/27/04 Period: 2003 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ray Bonilla Ray, Wood & Bonilla Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Discovery in progress.

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***Armelin, John M. v. City of Houston*** Cause #200316037  
AG Case #042046375

Declaratory Judgment Tax; Declaratory Judgment Filed: 09/10/04 Period: Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Jaqueline I. Leguizamon City of Houston
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Issue: Whether county court fees collected from persons who are not convicted of any criminal offense are constitutional. Plaintiffs seek class action declaratory relief from the Comptroller. Plaintiff also seeks attorney's fees.

Status: Trial to be set 10/10-29/05.

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***Arnold, Jessamine J., Estate of, Deceased, and Jim Arnold, Jr., Independent Executor v. Rylander, et al.*** Cause #GN203255  
AG Case #021670484

Inheritance Tax; Protest Filed: 09/09/02 Period: Amount: \$161,956	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  James F. Martens Christina A. Mondrik James F. Martens & Associates Austin
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Issue: Whether the IRS erred in increasing the value of the estate's assets and disallowing expenses and gifts.

Status: Answer filed.

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***Beadles, Joe Haven v. Comptroller*** Cause #GN500155

AG Case #052100160

Diesel Fuel Tax;	Asst. AAG Assigned:	Blake Hawthorne
Declaratory Judgment		
Filed: 01/14/05	Plaintiff's Counsel:	Joe Haven Beadles
Period:		Pro Se
Amount: \$1,709,078.44		Mt. Pleasant

Issue: Plaintiff claims that the State issued a diesel fuel bonded suppliers' permit to Plaintiff without Plaintiff's knowledge, allowing diesel fuel taxes to be assessed against Plaintiff. Plaintiff claims he never purchased or sold diesel fuel. Plaintiff claims the State previously collected the taxes in question from subsidiaries who sold diesel fuel through truck stops. Plaintiff claims these subsidiaries bought the diesel fuel from an oil company which the State, through an "agreement with the oil company," exempted from paying taxes.

Status: Discovery in progress.

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***CarMax Auto Superstores, Inc. v. Strayhorn, et al.*** Cause #GN400433

AG Case #041921990

Motor Vehicle Sales Tax;	Asst. AAG Assigned:	Jim Cloudt
Declaratory Judgment		
Filed: 02/12/04	Plaintiff's Counsel:	Lara L. Reenan
Period:		Henry Oddo Austin &
Amount: \$0.00		Fletcher
		Dallas

Issue: Whether Plaintiff's tax collection and financing activities are legal under the Tax Code, Finance Code and Constitution.

Status: Co-defendant's Motion to Dismiss granted 06/21/04.

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**Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Comptroller** Cause #96-08010  
AG Case #96599817

Property Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 07/11/96	Plaintiff's Counsel:	Robert Mott
Period: 1994		Joseph Longoria
Amount: \$ N/A		Perdue, Brandon, Fielder, Collins & Mott
		Houston

Issue: Various issues concerning the validity of the Comptroller's property value study.

Status: Answer and Special Exception filed. Inactive. Settlement reached with Canyon ISD. Only La Porte ISD is now pending. LaPorte ISD has made a settlement offer. Inactive.

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**Chevron USA, Inc. v. Strayhorn, et al.** Cause #GN304320  
AG Case #031880487

Gas Production Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 11/05/03	Plaintiff's Counsel:	Mark W. Eidman
Period: 07/01/88-12/31/90		Ray Langenberg
Amount: \$225,194.00		Doug Sigel
		Scott, Douglass & McConnico
		Austin

Issue: Whether Plaintiff owes gas production tax on "Order 94 Payments." Plaintiff also seeks declaratory judgment and attorneys' fees.

Status: Case settled.

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**Comfort ISD v. Comptroller** Cause #GV402302  
AG Case #042000315

Property Tax; Administrative Appeal	Asst. AAG Assigned:	Natalie McLemore
Filed: 08/02/04	Plaintiff's Counsel:	Robert Mott
Period: 2003		Joseph Longoria
Amount: \$N/A		Perdue, Brandon, Fielder, Collins & Mott
		Houston

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Discovery in progress.

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**Commerce ISD v. Comptroller** Cause #GV402275  
AG Case #042000299

Property Tax; Administrative Appeal Filed: 07/29/04 Period: 2003 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott Houston
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Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Answer filed.

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**ConocoPhillips Co. v. Strayhorn, et al.** Cause #GN403149  
AG Case #042035626

Gas Production Tax; Refund Filed: 09/22/04 Period: 01/01/95- 11/30/97 Amount: \$539,224.78	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Jamie Nielson Austin
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Issue: Whether Plaintiff's refund claim fell within the statute of limitations deadline once the high-cost gas exemption or reduction was applied. Whether the high-cost gas refund claim involves the same type of tax as the marketing cost deduction claim which was the basis for the Section 111.207(d) tolling.

Status: Answer filed.

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**ConocoPhillips Co. v. Strayhorn, et al.** Cause #GN500169  
AG Case #052091428

Gas Production Tax; Refund	Asst. AAG Assigned:	Blake Hawthorne
Filed: 01/18/05	Plaintiff's Counsel:	Mark W. Eidman
Period: 01/01/97- 07/31/98		Ray Langenberg
Amount: \$181,161.89		Doug J. Dashiell
		Scott, Douglass & McConnico
		Austin

Issue: Whether Plaintiff's refund claim fell within the statute of limitations deadline once the high-cost gas exemption or reduction was applied. Whether the high-cost gas refund claim involves the same type of tax as the marketing cost deduction claim which was the basis for the Section 111.207(d) tolling.

Status: Answer filed.

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**Cypress-Fairbanks ISD, et al. v. Troy G. Rountree, et al.** Cause #2004-54335  
AG Case #042056796

Property Tax; Declaratory Judgment	Asst. AAG Assigned:	Natalie McLemore
Filed: 09/30/04	Plaintiff's Counsel:	Walter E. Spears
Period:		Stephen K. Hamilton
Amount: \$N/A		Neil H. McLaurin, IV
		Bartley & Spears, P.C.
		Houston

Issue: Whether Tax Code §32.05(c), which subordinates the liens of property owners' associations, is unconstitutional.

Status: Answer filed.

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**El Paso Natural Gas Co. v. Sharp** Cause #91-6309  
AG Case #9178237

Gas Production Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 05/06/91	Plaintiff's Counsel:	Alfred H. Ebert, Jr.
Period: 01/01/87 - 12/31/87		Andrews & Kurth
Amount: \$3,054,480.60		Houston

Issue: Whether Comptroller should have granted Plaintiff a hearing on penalty waiver and related issues.

Status: State's Plea in Abatement granted pending outcome of administrative hearing on audit liability. Negotiations pending.

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***Fort Worth's PR's, Inc. v. Rylander, et al.*** Cause #GN200711  
AG Case #021573480

Mixed Beverage Gross Receipts Tax; Protest & Declaratory Judgment Filed: 03/04/02 Period: 03/01/99-06/30/99 Amount: \$36,177.36	Asst. AAG Assigned:  Plaintiff's Counsel:	Jeff Mullins  John L. Gamboa Acuff, Gamboa & White Fort Worth
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Issue: Whether the Comptroller used a non-representative sample to determine plaintiff's tax liability. Whether depletion and error rates were calculated correctly.

Status: Discovery extended until 05/15/05. Plea to the Jurisdiction and Motion for Summary Judgment withdrawn. Settlement negotiations being discussed.

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***Gilani, Fred v. Progressive Amusement, Inc., Craig Byler and Comptroller***  
Cause #2004-10090-16  
AG Case #041948720

Property Tax; Injunction & Declaratory Judgment Filed: 03/30/04 Period: Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Jeff Mullins  Stephen D. Stephens Lewisville
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Issue: Whether Plaintiff's claim of complying with contract terms results in ownership of personal property. Whether the defendants' enforcement actions are arbitrary. Plaintiff seeks injunctive relief and a temporary restraining order.

Status: A non-suit has been filed.

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**Glen Rose ISD v. Comptroller** Cause #GV402292  
AG Case #042000307

Property Tax;  
Administrative Appeal  
Filed: 07/30/04  
Period: 2003  
Amount: \$N/A

Asst. AAG Assigned:

Natalie McLemore

Plaintiff's Counsel:

Robert Mott  
Joseph Longoria  
Perdue, Brandon, Fielder,  
Collins & Mott  
Houston

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Answer filed.

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**Greenville ISD v. Comptroller** Cause #GV402276  
AG Case #041999350

Property Tax;  
Administrative Appeal  
Filed: 07/29/04  
Period: 2003  
Amount: \$N/A

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Robert Mott  
Perdue, Brandon, Fielder,  
Collins & Mott  
Houston

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Answer filed.

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**Harris County, et al. v. John W. Adams, et al.** Cause #2004-54306  
AG Case #042056804

Property Tax; Declaratory  
Judgment  
Filed: 09/30/04  
Period:  
Amount: \$N/A

Asst. AAG Assigned:

Natalie McLemore

Plaintiff's Counsel:

Walter E. Spears  
Stephen K. Hamilton  
Neil H. McLaurin, IV  
Bartley & Spears, P.C.  
Houston

Issue: Whether Tax Code §32.05(c), which subordinates the liens of property owners' associations, is unconstitutional.

Status: Answer filed.

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**Lake Austin Spa Investors, Ltd. v. Rylander, et al.** Cause #GN203899  
AG Case #021703913

Hotel Occupancy Tax; Protest, Injunction & Declaratory Judgment Filed: 10/28/02 Period: 03/01/97- 11/30/00 12/01/00-03/31/02 Amount: \$193,629.45 \$59,232.72	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Kirk R. Manning Stephen L. Phillips Julie K. Lane Cantey & Hanger Austin
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Issue: Whether Plaintiff's service charges are subject to the hotel tax. Whether the charges are gratuities under the Comptroller's rule. Plaintiff also seeks injunctive relief and attorneys' fees.

Status: Discovery in progress. Discussions in progress with opposing counsel.

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**MFC Finance Co. of Texas v. Rylander, et al.** Cause #GN002653  
AG Case #001352632

Motor Vehicle Sales Tax; Refund Filed: 09/07/00 Period: 01/01/96- 12/31/98 Amount: \$5,533,079.80	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff is entitled to tax credit and refund as provided under the sales tax bad debt statute for motor vehicle taxes on installment sales where the purchaser defaulted. Whether the refusal to allow a refund violates equal taxation because there is no rational basis to treat installment sellers of vehicles differently than vehicle renters and other retailers.

Status: Trial setting passed. Discovery in progress. Plaintiff filed Motion for Partial Summary Judgment 03/03/05.

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**Marathon ISD v. Strayhorn** Cause #GV402238  
AG Case #041999236

Property Tax; Administrative Appeal Filed: 07/27/04 Period: 2003 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Ray Bonilla Ray, Wood & Bonilla Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Discovery in progress.

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**McLane Co., Inc. and McLane Foodservice-Lubbock, Inc. v. Rylander, et al.**  
Cause #GN104253  
#03-03-00502-CV  
#04-1066  
AG Case #021547393

Protest Tax; Protest, Injunction & Declaratory Judgment Filed: Period: Amount: \$1,173.83 & \$3,690.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Gilbert J. Bernal, Jr. David J. Sewell Stahl, Bernal & Davies Austin
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Issue: Whether the Comptroller must accept a letter of credit as security for Plaintiff's participation in the cigarette tax trust fund.

Status: Summary Judgment hearing held 07/30/03. Pleas to the jurisdiction granted in part and Summary Judgment granted for the Comptroller. McLane filed Notice of Appeal 08/19/03. Appellants' brief filed 01/15/04. Appellees' brief filed 03/16/04. Submitted on Oral Argument 04/07/04. On 10/14/04 the Court of Appeals affirmed in part and dismisses entire case for lack of jurisdiction. McLane filed a Petition for Review in the Texas Supreme Court 11/29/04. Response to Petition for Review waived 12/08/04. Case forwarded to Court 12/14/04. On 01/11/05 Court requested response to the Petition for Review. Respondents' response filed 02/10/05. Petitioners' reply filed 02/24/05. Petition for Review denied 03/11/05. Motion for Rehearing was due 03/28/05.

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***Mirage Real Estate, Inc., et al. v. Richard Durbin, et al.*** Cause #92-16485  
AG Case #92190294

Alcoholic Beverage Gross Receipts Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 12/03/92	Plaintiff's Counsel:	Jim Mattox
Period:		Lowell Lasley
Amount: \$		Michael D. Mosher
		Paris

Issue: Whether the TABC and Comptroller were allowed to use inventory depletions analysis to determine amount of gross receipts tax owed. Plaintiffs seek class certification.

Status: Answer filed. Inactive.

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***Petro Express Management, L.L.C. v. Rylander, et al.*** Cause #GN204123  
AG Case #021705918

Fuels Tax; Injunction and Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 11/14/02	Plaintiff's Counsel:	Donald H. Grissom
Period: 2002		Grissom & Thompson
Amount: \$450,000		Austin

Issue: Whether the Comptroller's collection actions are arbitrary, contrary to statute, and unconstitutional. Plaintiff seeks injunctive relief and a return of seized property.

Status: Temporary Restraining Order denied. Inactive.

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***Preston Motors by George L. Preston, Owner v. Sharp, et al.*** Cause #91-11987  
AG Case #91133170

Motor Vehicle Tax; Protest	Asst. AAG Assigned:	Jim Cloudt
Filed: 08/26/91	Plaintiff's Counsel:	George L. Preston
Period: 12/01/86 - 09/30/89		Paris
Amount: \$21,796		

Issue: Whether motor vehicle tax should fall on dealer/seller rather than the purchaser under §152.044. Related constitutional issues.

Status: Inactive.

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**Quinlan ISD v. Strayhorn** Cause #GV402239  
AG Case #041999251

Property Tax; Administrative Appeal Filed: 07/27/04 Period: 2003 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ray Bonilla Ray, Wood & Bonilla Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties and whether the Comptroller failed to consider local modifiers, sales and market information. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Discovery in progress.

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**Ranger Fuels & Maintenance, L.L.C. v. Rylander, et al.** Cause #GN204124  
AG Case #021705900

Fuels Tax; Declaratory Judgment & Injunction Filed: 11/14/02 Period: Amount: \$115,000.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Donald H. Grissom Grissom & Thompson Austin
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Issue: Whether fuels tax is actually owed by an unrelated company. Whether the Comptroller abused its discretion and violated Plaintiff's constitutional rights. Plaintiff seeks injunctive and declaratory relief.

Status: Temporary Restraining Order denied. Inactive.

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**Ranger Fuels & Maintenance, Inc., L.L.C. v. Alon USA, LP** Cause #3-03CV1535D  
AG Case #042049338

Fuels Tax; Subpoena Filed: 10/06/04 Period: 01/01/02 to Present Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Robert J. Clary Owens, Clary & Aiken, LLP Dallas
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Issue: Creditor seeks tax and communication information.

Status: Answer filed.

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**Robinson, Barbara Cooke, Estate of v. Strayhorn, et al.** Cause #GN300338  
AG Case #031758915

Declaratory Judgment Tax; Declaratory Judgment Filed: 02/03/03 Period: 1990 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Arne M. Ray Houston
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Issue: Whether the Comptroller's lien should be nullified as expired or invalid on its face.

Status: Cross-Motions for Summary Judgment and Defendant's Plea to the Jurisdiction filed 02/13/04.

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**San Vicente ISD v. Strayhorn** Cause #GV402240  
AG Case #041999194

Property Tax; Administrative Appeal Filed: 07/27/04 Period: 2003 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ray Bonilla Ray, Wood & Bonilla Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Discovery in progress.

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**State Farm Fire and Casualty Co. and State Farm Mutual Automobile Insurance Co. v. Strayhorn, et al.** Cause #GN401383  
AG Case #041964826

Hotel Occupancy Motor Vehicle Tax; Refund Filed: 04/30/04 Period: 12/01/97- 08/31/01 Amount: \$2,000,000.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg R. Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether plaintiffs are exempt from hotel occupancy and motor vehicle sales taxes because of Tex. Ins. Code arts. 4.10 and 4.11. Plaintiff also claims violation of equal and uniform taxation, equal rights and protection, due course of law and process.

Status: Answer filed.

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***Texaco Exploration & Production, Inc.*** Cause #GN400440  
AG Case #041925843

Gas Production Tax; Refund Filed: 02/13/04 Period: 01/01/97- 05/31/02 Amount: \$456,608.80	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Mark W. Eidman Ray Langenberg Matthew J. Meese Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff's initial refund claim, still pending administrative review at the time of filing a second claim, fell within the statute of limitations deadline.

Status: Plaintiff filed a Motion for Summary Judgment 02/02/05.

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***Texas RSA 15B2 Limited Partnership v. Strayhorn, et al.*** Cause #GN403954  
AG Case #042073783

Telecommunications Infrastructure Fund (TIF) Tax; Protest Filed: 12/03/04 Period: 02/01/99- 10/31/02 Amount: \$293,223.67	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie McLemore  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether TIF charges which Plaintiff passed on and collected from its customers are allowable reimbursements as TIF assessment. Whether Plaintiff is liable for "interest on the amount collected" or "accrued" interest on the amount collected.

Status: Discovery in progress.

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***That's Entertainment - San Antonio, LLC dba Park Place v. Strayhorn, et al.***

Cause #GN400781

AG Case #041937228

Mixed Beverage Gross  
Receipts Tax; Protest  
Filed: 03/09/04  
Period: 05/01/96-  
09/30/98  
Amount: \$211,145.65

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

Curtis J. Osterloh  
Matthew J. Meese  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether door charges should be taxed by both the mixed beverage gross receipts tax and sales tax. Plaintiff claims that the application of both taxes is in violation of equal and uniform taxation, and equal protection under the law. Plaintiff also claims violation of due process and the commerce clause.

Status: Discovery in progress. Trial set 06/13/05.

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***Willow Creek Resources, Inc. v. Strayhorn, et al.*** Cause #GN303805

#03-04-00629

AG Case #031859812

Gas Production Tax;  
Refund

Asst. AAG Assigned:

Blake Hawthorne

Filed: 09/23/03  
Period: 01/01/97-  
12/31/99  
Amount: \$1,160,682.81

Plaintiff's Counsel:

Mark W. Eidman  
Ray Langenberg  
Doug J. Dashiell  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether plaintiff is entitled to a natural gas production tax refund on gas which plaintiff claims qualifies for the exemption for high cost gas under §201.057.

Status: Summary Judgment granted for Plaintiff 06/15/04. Notice of Appeal filed by State 10/12/04. Appellant's brief filed 11/09/04. Appellees' brief filed 12/09/04. Appellants' reply brief filed 01/12/05. Submitted on Oral Argument 02/02/05. Opinion issued 03/24/05 affirming trial court's summary judgment.

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***Yantis ISD v. Comptroller*** Cause #GV402274  
AG Case #041999244

Property Tax;  
Administrative Appeal  
Filed: 07/29/04  
Period: 2003  
Amount: \$N/A

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Robert Mott  
Perdue, Brandon, Fielder,  
Collins & Mott  
Houston

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Answer filed.

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## Closed Cases

### ***Chaparral Steel Co. and Chaparral Steel Midlothian, L.P. v. Strayhorn, et al.***

Cause #GN403208

AG Case #042040154

Sales Tax; Refund

Filed: 09/27/04

Period: 10/01/93-  
02/28/97

03/01/97-10/31/97

Amount: \$569,549.24

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Mark W. Eidman  
Ray Langenberg  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether the following items and services are exempt from sales tax: certain property Plaintiff purchased and used or consumed during manufacturing; certain services performed on exempt property; third party installation services; contracted services by the Plaintiff; wrapping and packaging used to complete the manufacturing process; maintenance on real property; items with a useful life of six months or less; and items used and consumed in manufacturing.

Status: Non-suited 01/26/05.

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### ***LabOne, Inc. v. Rylander, et al.*** Cause #GN002190

AG Case #001335645

Sales Tax; Protest &  
Declaratory Judgment

Filed: 08/02/00

Period: 1991-1997

Amount: \$520,983.95

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

James F. Martens  
James F. Martens &  
Associates  
Austin

Issue: Whether Plaintiff has nexus in Texas for tax on performance of lab tests in Kansas. Whether Plaintiff's activities are taxable insurance services in Texas. Whether Plaintiff's services and sales of supplies are exempt by rule and statute. Whether tax on Plaintiff violates due process and equal taxation. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Agreed Judgment signed 01/20/05.

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**May Department Stores Co., The v. Strayhorn, et al.** Cause #GN300583  
#03-03-00729-CV  
#04-0904  
AG Case #031759525

Sales Tax; Refund Filed: 02/21/03 Period: 04/01/96- 03/31/99 Amount: \$930,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether printing on bulk paper purchased out-of-state and made into catalogs and circulars is subject to use tax. Whether the essence of the transaction in producing the catalogs is non-taxable labor. Whether "distribution" is included in the use tax.

Status: Summary Judgment granted to Comptroller 10/30/03. Notice of Appeal filed 12/02/03. Appellant's brief filed 01/12/04. Appellees' brief filed 02/17/04. Appellant's reply brief filed 03/08/04. Submitted on Oral Argument 04/28/04. Third COA affirmed District Court's judgment 07/15/04. Motion for Rehearing filed 07/30/04; denied. Substituted Opinion issued 08/26/04, still affirming judgment for Comptroller. Petition for Review filed in Tx. Supreme Court 10/11/04. Conditional waiver of response filed by State 10/13/04. Response to Petition for Review requested by Court 11/03/04. Response filed by Respondent 12/03/04. Petitioner's Reply Brief filed 12/20/04. Petition for Review denied 01/21/05. Motion for Rehearing was due 02/07/05.

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**RAI Credit Corp. v. Rylander, et al.** Cause #GN003556  
AG Case #011395266

Sales Tax; Refund & Declaratory Judgment Filed: 12/12/00 Period: 01/01/89- 12/31/93 Amount: \$297,616.32	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David Cowling Jones Day Dallas
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Issue: Whether Plaintiff lacks nexus for collection of use tax on accounts receivable that were factored to it. Whether Plaintiff is a “seller” or “retailer” engaged in business in Texas. Whether Plaintiff is liable under §111.016 as a person who received tax. Whether imposition of tax denies equal protection. Plaintiff also seeks declaratory relief and attorneys’ fees.

Status: Discovery in progress. Summary Judgment hearing passed. Agreed Judgment signed 02/17/05.

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***Security National Insurance Co. v. Rylander, et al.*** Cause #GN001503  
AG Case #001310820

Insurance Premium Tax; Protest Filed: 05/23/00 Period: 1995-1998 Amount: \$1,226,220.50	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Jay A. Thompson Thompson, Coe, Cousins & Irons Austin
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Issue: Whether daily negative bank account balances should be adjusted to \$0 to compute the proper percentage of Texas investments for gross premiums tax.

Status: Cross-motion for Summary Judgment filed. MSJ hearing held 12/14/04. Judgment granted 01/24/05 for Plaintiff.

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***Southern Union Co. v. Rylander, et al.*** Cause #GN003692  
AG Case #011399409

Franchise Tax; Refund Filed: 12/29/00 Period: 1994 Amount: \$549,983	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff was required to use historical cost as the basis of assets of an acquired corporation. Whether post-retirement benefit obligations are debt. Whether disallowing deduction of post-retirement benefits violates equal protection. Whether Plaintiff may use another method to account for depreciation.

Status: Agreed Judgment signed 01/24/05.

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***Terlingua Common ISD v. Comptroller*** Cause #GV302967  
AG Case #031833064

Property Tax;  
Administrative Appeal  
Filed: 07/17/03  
Period: 2002  
Amount: \$N/A

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Ray Bonilla  
Ray, Wood & Bonilla  
Austin

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties that involved creative financing and by misapplying burden of proof.

Status: Agreed Judgment signed 02/15/05.

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